

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

COLUMBIA GAS TRANSMISSION, LLC,)
)
Plaintiff,)
)
v.) Civil Action No.:
)
0.12 ACRES OF LAND, MORE OR)
LESS, IN WASHINGTON COUNTY,)
MARYLAND; STATE OF MARYLAND,)
DEPARTMENT OF NATURAL RESOURCES,)
)
Defendants.)

COMPLAINT IN CONDEMNATION

Plaintiff, Columbia Gas Transmission, LLC (“**Columbia**”), pursuant to its power of eminent domain, as authorized by 15 U.S.C. § 717f(h), and pursuant to Federal Rule of Civil Procedure 71.1, files this Complaint in Condemnation for (i) an order of condemnation for the easement, right-of-way, and other necessary property interests more particularly depicted and described in **Exhibit B**, attached hereto and incorporated by reference herein (the “**Easement**”); (ii) the ascertainment and award of just compensation and damages properly attributable to Columbia’s acquisition of the Easement; and (iii) pursuant to Columbia’s Motion for an Order of Condemnation and for Preliminary Injunction (and attached Declaration in Support) and its Memorandum in Support, which are filed contemporaneously herewith and incorporated by reference herein (collectively referred to as the “**preliminary injunction moving papers**”), an order granting Columbia immediate access to and use of the Easement.

The Parties

1. Columbia is a Delaware limited liability company, properly authorized to do business in the State of Maryland.

2. Columbia is a company organized for the purpose of, among other things, transporting natural gas in interstate commerce through pipes and conduits, and is an interstate natural gas company within the meaning of the Natural Gas Act, 15 U.S.C. §§ 717a(6) and (1), and as such, is qualified to construct, own, operate, and maintain pipelines for the transmission of natural gas in interstate commerce. Columbia acts pursuant to authorization granted by, and subject to, Federal Energy Regulatory Commission (“FERC”) jurisdiction.

3. The State of Maryland, Department of Natural Resources (“MDNR” or “Defendant”) is the record title holder of the Tract and the only party in interest potentially affected by this taking.

4. The Easement sought to be condemned in this action is 0.12 acres, more or less, in Washington County, Maryland. The legal description of the real property at issue in this case (the “Tract” or “Tract No. 1”), along with the specific easement interests in and to Tract No. 1 that Columbia seeks (*i.e.*, the uses for which the property is to be taken and the interests are to be acquired), are depicted and described in detail in **Exhibit B**, which is attached hereto and incorporated herein by this reference.

Jurisdiction and Venue

5. This is a civil action for the taking of property interests under the power of eminent domain and for the determination and award of just compensation related thereto. This Court has original jurisdiction in this matter pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States, and pursuant to 28 U.S.C. § 1337 because this action arises under an Act of Congress regulating interstate commerce. The Natural Gas Act, 15 U.S.C. § 717f(h) grants federal jurisdiction.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2), as the Tract is situated within this judicial district.

The FERC Certificate, Project, and Project Route

7. On July 19, 2018, in FERC Docket No. CP17-80-000, FERC granted Columbia a certificate of public convenience and necessity (the “**Certificate**”). A true and correct copy of the Certificate is attached hereto and incorporated herein by this reference as **Exhibit A**.

8. The FERC Certificate approves the construction and operation of approximately 3.37 miles of 8-inch diameter natural gas pipeline, extending from existing 20-inch and 24-inch pipelines in Fulton County, Pennsylvania to a site in Morgan County, West Virginia (the “**Project**”). The subject pipeline will commence at interconnections with Columbia’s Line 1804 and Line 10240 in Pennsylvania, and the proposed pathway of the pipeline will cross Washington County, Maryland and travel under the Potomac River before ending at a point of delivery with the local distribution system of Mountaineer Gas Company, the project shipper, in Morgan County, West Virginia.

9. The Project will provide up to 47,500 dekatherms per day (Dth/d) of incremental firm transportation service to serve markets in West Virginia, in addition to serving multiple communities by increasing supply options and enabling the safe and reliable transport of natural gas.

10. The FERC determined, among other things, that, “[b]ased on the benefits the project will provide and the lack of effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, . . . the public convenience and necessity requires approval of Columbia’s proposal under section 7 of the NGA, as conditioned in this order.” Ex. A at ¶ 16.

11. The FERC Certificate expressly provides that Columbia may exercise eminent domain authority consistent therewith, and pursuant to the Natural Gas Act, as described more fully below.

12. The FERC has determined and approved the route of the Project (the “**Project Route**”).

13. The Easement is a portion of the Project Route approved by the FERC Certificate as necessary for the construction, maintenance, operation, alteration, testing, replacement, and repair of the Project.

14. Of the 22 tracts of real property impacted by the Project in total, Columbia has, prior to instituting these proceedings, successfully negotiated the voluntary acquisition of easements on 18 tracts (82% of the tracts), leaving only this single tract and three others under common ownership of the National Park Service unacquired. All privately-owned property has been voluntarily acquired without the need for Court intervention.

Columbia’s Efforts to Acquire the Easement

15. Columbia has caused a reasonably diligent search of the public records to be conducted, considering both the property’s character and value and the interests to be acquired, in order to ascertain the identity of parties owning or having an interest in the Tract, and this search indicated that MDNR is the record title holder of the Tract and the only party in interest potentially affected by this taking.

16. Columbia began its Easement-acquisition efforts in 2016, and those efforts have included, among other things, making direct contact with representatives of MDNR, which is the record title holder of the Tract, through telephone calls, personal meetings, and/or written correspondence to discuss the Project and the related Easement rights sought by Columbia,

submitting requested documents and information to MDNR, and negotiating both the terms of acquisition and the form of the easement agreement with MDNR.

17. Columbia commissioned an appraisal by an independent appraiser licensed in the State of Maryland to determine the compensation due by reason of the imposition of the Easement sought for the Project (the “**Appraisal**”).

18. Columbia offered MDNR consideration for the Easement in the amount of \$5,000.00, an amount in excess of the compensation due as determined by the Appraisal.

19. Thereafter, negotiated and agreed-upon terms of a proposed easement agreement were reached, the execution of which would have obviated the need for these proceedings.

20. On information and belief, formal conveyance of the Easement rights pursuant to the negotiated and agreed-upon terms and form of the easement agreement requires approval by the Maryland Board of Public Works (“**BPW**”). After more than two years of effort by Columbia, the matter of approval of the conveyance of the Easement was placed on the agenda for the January 2, 2019 BPW meeting, at which Columbia’s easement application was denied.

21. Columbia has attempted to negotiate the voluntary acquisition of the Easement to no avail; accordingly, Columbia has been unable to acquire the Easement by contract.

22. Upon information and belief based upon, among other things, the course of negotiations with MDNR and the negotiated Easement consideration, the amount claimed by the record title holder of the Tract relative to the outstanding Easement exceeds \$3,000.

23. Columbia will timely join the Tract at issue and the sole defendant herein to this Action by service of a Notice of Condemnation, the form of which is attached hereto as **Exhibit C** and incorporated herein by this reference.

24. Based on the foregoing, Columbia has satisfied all of the jurisdictional prerequisites and may now exercise its federal powers of eminent domain related to the Project. Accordingly, Columbia is likely to succeed on the merits of this litigation.

Right to Condemn

25. The Natural Gas Act expressly permits a holder of a Certificate to acquire the necessary land and rights “by the exercise of the right of eminent domain” if it is unable to reach an agreement with the landowner. 15 U.S.C. § 717f(h).

26. As set forth above, Columbia is a holder of a Certificate.

27. Columbia has also been unable to acquire the Easement, which is necessary to the operation of the Project, by contract despite its exhaustive efforts to do so.

28. In accordance with the preliminary injunction moving papers filed contemporaneously herewith, Columbia is entitled to immediate access to and use of the Easement.

The Tract and the Easement

Washington County, Maryland – Tract No. 1

29. The legal description of Tract No. 1, along with the specific easement interests in and to Tract No. 1 that Columbia seeks (*i.e.*, the uses for which the property is to be taken and the interests are to be acquired), are depicted and described in detail in **Exhibit B**, which is attached hereto and incorporated herein by this reference.

30. The State of Maryland, Department of Natural Resources is the record title holder of the Tract, the only party in interest potentially affected by this taking, and the only entity that may claim an interest in Tract No. 1.

31. The Easement sought in this condemnation action, as depicted on **Exhibit B**, is among those expressly authorized by the Certificate.

32. The FERC-approved Project Route generally includes: (a) a fifty-foot-wide permanent easement to place, operate, replace and/or maintain the pipeline; (b) associated construction easements necessary to construct and/or replace the pipeline; and (c) all rights, including of ingress, egress, and reasonable access, necessary to construct, protect, repair, replace, upkeep, and maintain the pipeline and the permanent easement.

33. The Easement will be 102 feet long and 50 feet wide. The Easement comprises a portion of an approximately 4,294-foot horizontal directional drill (“HDD”) that will, among other things, pass beneath the Tract at approximately 175 feet below the surface and beneath the Potomac River at a depth of approximately 114 feet. Neither the entry nor the exit point of the HDD is situated on the Tract at issue, accordingly, there is no contemplated disturbance of the surface of the Tract as a result of the Project.

34. The Easement, once condemned, will be subject to the terms and conditions, and devoted to the purposes, stated in the Certificate.

35. The right to use the Easement shall belong to Columbia and its agents, employees, designees, contractors, guests, invitees, successors and assigns, and all those acting by or on behalf of it for the above-stated purposes. As is more fully stated in **Exhibit B**, Columbia seeks all necessary rights for the purposes stated herein to exercise the rights granted by the Certificate.

36. The Project cannot be constructed in accordance with the FERC Certificate absent Columbia’s acquisition and/or without this Court’s Order granting to Columbia immediate rights of access to and use of the Easement in and to the Tract, all as is more fully discussed herein.

37. Columbia must commence active construction activities for the Project as soon as is practicable in order to meet the July 19, 2020 expiry deadline under the Certificate (the

“Certificate Expiry Date”) and Columbia’s contractually committed in-service date of November 1, 2020 (the “In-Service Deadline”).

38. As is discussed in greater detail in Columbia’s preliminary injunction moving papers, time is of the essence, and maintaining the Project schedule is critical, as, among other things, a delay in construction of the Project would likely prevent Columbia from timely finishing the Project and complying with its obligations under the FERC Certificate.

39. If any of the land within the Easement is subject to valid preexisting oil and gas leases, coal leases, surface leases, pipeline easements or easements for other purposes, Columbia’s Easement rights acquired hereunder from and against the owners of such leases and/or, easements, are (i) acquired only to the extent necessary to carry out the rights granted to Columbia under the Easement sought, and (ii) to be exercised by Columbia so as to not unreasonably interfere with existing rights of such owners, provided, however, that Columbia shall be entitled in all events to use the Easement to carry out the purposes approved by the FERC in the Certificate. Columbia has named such owners to the extent they may claim some interest in the lands burdened by the Easement sought by Columbia. Defendant(s) who own any interest in a valid and existing lease and/or easement may use lands lying within the Easement for the uses authorized under the applicable lease and/or easement, provided such uses do not destroy, threaten, or unreasonably interfere with Columbia’s permitted uses.

40. Columbia does not seek to acquire any royalty, working, revenue, overriding, or other oil, gas, or mineral interests. Defendant(s) shall, to the extent owned by Defendant(s), retain all the oil, gas, and other minerals in, on and under the Tract, including within the Easement; provided, however, Defendant(s) shall not be permitted to drill or operate equipment for the production or development of oil, gas, and minerals within or on the permanent pipeline easement

and/or the permanent access road easement, but Defendant(s) shall be permitted to extract the oil, gas and minerals from and under same by directional drilling and other means, so long as such activities do not damage, destroy, injure, threaten, and/or interfere with Columbia's use, operation, and maintenance of the Facilities or Columbia's use of said Easement for the purposes for which same are sought by Columbia

41. It is in the public interest and necessity, as evidenced by the Certificate, that the Easement as certificated by FERC and described herein, and in **Exhibit B**, be condemned for the public purposes herein described.

42. The intended uses of the Easement to be taken are within the authority conferred by the Certificate.

43. Pursuant to Federal Rules of Civil Procedure 65(c), 67, and 71.1(j)(1), Columbia stands ready to deposit into the registry of the Court the amount of its rejected pre-condemnation offer, \$5,000, or such other amount as may be deemed appropriate by this Court, together with a bond, pursuant to Fed. R. Civ. P. 65(c), for such additional amount as may be deemed appropriate by this Court.

WHEREFORE, Columbia prays that this Court enter an Order:

- Bifurcating the issues of (1) the determination of Columbia's right to acquire the property interest at issue through the exercise of eminent domain, and (2) just compensation for the taking;
- Declaring that Columbia is entitled to acquire the Easement for the purposes set forth herein;
- Finding in favor of Columbia and authorizing Columbia to condemn the Easement identified and described herein;

- Pursuant to the preliminary injunction moving papers filed contemporaneously herewith, granting Columbia immediate access to and use of the Easement identified and described herein, prior to the determination of just compensation, upon the posting of security required by the Court to begin pre-construction activities and construction of the Facilities while the issue of just compensation for the taking is resolved in this Court; and
- Ordering such other and further relief as may be appropriate under the circumstances, including, without limitation, such orders as may be necessary to effect the granting of the Easement sought herein to Columbia.

Dated: May 16, 2019

Respectfully submitted,

By:

/s/
Alan M. Rifkin (MD Bar No. 11562)
Barry L. Gogel (MD Bar No. 25495)
Rifkin Weiner Livingston, LLC
225 Duke of Gloucester Street
Annapolis, Maryland 21401
T: 410.269.5066
F: 410.269.1235
arifkin@rwllaw.com
bgogel@rwllaw.com

John Haug (to be admitted pro hac vice)
David Fedder (to be admitted pro hac vice)
Michael Harriss (to be admitted pro hac vice)
Dentons US LLP
211 N. Broadway Suite 3000
St. Louis, MO 63102
T: 314.259.1800
F: 314.259.5959
john.haug@dentons.com
david.fedder@dentons.com
michael.harriss@dentons.com

*Attorneys for Plaintiff Columbia Gas Transmission,
LLC*

164 FERC ¶ 61,036

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Columbia Gas Transmission, LLC

Docket No. CP17-80-000

ORDER ISSUING CERTIFICATE

(Issued July 19, 2018)

1. On March 15, 2017, Columbia Gas Transmission, LLC (Columbia) filed an application, pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² for authorization to construct and operate its Eastern Panhandle Expansion Project, extending from Fulton County, Pennsylvania to Morgan County, West Virginia. The project is designed to provide up to 47,500 Dekatherms per day (Dth/d) of incremental firm transportation service.

2. As discussed below, the Commission grants Columbia's requested certificate authorization, subject to certain conditions.

I. Background and Proposal

3. Columbia, a limited liability company organized and existing under the laws of the State of Delaware, is a natural gas company as defined by section 2(6) of the NGA.³ Columbia is engaged in the business of transporting natural gas and operating underground storage fields in interstate commerce under authorizations granted by and subject to the jurisdiction of the Commission. Columbia operates facilities located in the states of Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157, Subpart A (2017).

³ 15 U.S.C. § 717a(6) (2012).

4. Columbia proposes to construct and operate its Eastern Panhandle Expansion Project to provide up to 47,500 Dth/d of incremental firm transportation service to serve markets in West Virginia. To provide the incremental service, Columbia proposes to construct and operate approximately 3.37 miles of 8-inch-diameter pipeline, commencing at interconnections with Columbia's Line 1804 and Line 10240 in Fulton County, Pennsylvania, and extending through Washington County, Maryland, to a point of delivery with the local distribution system of Mountaineer Gas Company (Mountaineer Gas), the project shipper, in Morgan County, West Virginia.

5. Columbia conducted an open season, between December 29, 2016 and January 6, 2017, to solicit binding offers for firm transportation service associated with the project. Columbia received two bids by the close of the open season from: (1) Columbia Gas of Maryland for 1,200 Dth/d; and (2) Mountaineer Gas for 47,500 Dth/d. However, Columbia states that it subsequently determined that it could satisfy Columbia Gas of Maryland's request for additional service using existing system capacity and receipt and delivery points. Accordingly, the Eastern Panhandle Expansion Project was designed to meet Mountaineer Gas' request for 47,500 Dth/d of capacity, and Mountaineer Gas and Columbia entered into a precedent agreement for the entire capacity of the project for a 20-year primary term.⁴

6. Columbia estimates the proposed facilities will cost approximately \$24.97 million. Columbia proposes to charge its existing system reservation and commodity rates under Rate Schedule FTS (Firm Transportation Service) as the initial recourse rates for firm service on the proposed facilities. Mountaineer Gas elected to pay the recourse rate for the proposed service. Columbia also requests that the costs associated with the Eastern Panhandle Expansion Project be accorded a presumption of rolled-in rate treatment in its next NGA section 4 rate proceeding, asserting that the incremental revenues will exceed the proposed facilities' incremental costs. Additionally, Columbia states that all other maximum applicable demand surcharges and surcharges as set forth in Columbia's FERC Gas Tariff will also apply.

⁴ Concurrently with the project's open season, Columbia solicited proposals for turn-back capacity, but received no such proposals.

II. Public Notice, Interventions, and Comments

7. Notice of Columbia's application was published in the *Federal Register* on April 4, 2017.⁵ The notice established April 19, 2017, as the deadline for filing comments and interventions.⁶ NJR Energy Services Company, NiSource Distribution Companies, PSEG Energy Resources & Trade L.L.C., New Jersey Natural Gas Company, Conoco Phillips Company, Rice Energy Marketing L.L.C., Duke Energy Kentucky, Inc., Piedmont Natural Gas Company, Inc., Exelon Corporation, Potomac Riverkeeper, Inc. d/b/a Potomac Riverkeeper Network, the cities of Charlottesville and Richmond, Virginia, National Grid Gas Delivery Companies and Paul A. Stern filed timely, unopposed motions to intervene. These timely, unopposed motions to intervene were granted automatically by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷

8. On May 25, 2017, over one month following the deadline for late interventions, Allegheny Defense Project and Chesapeake Climate Action Network each filed an untimely motion to intervene. Although neither late intervenor demonstrated good cause for filing late, because the deadline for filing a timely intervention passed before the Commission announced its new policy governing late interventions in *Tennessee Gas Pipeline Company, L.L.C.*,⁸ the untimely motions to intervene are granted.⁹

9. Individuals and other entities filed comments concerning project safety, environmental impacts, and project need. These comments are addressed in the Environmental Assessment (EA) for the project and in the environmental section of this order, as appropriate.

⁵ *Notice of Application*, 82 Fed. Reg. 16,390 (Apr. 4, 2017).

⁶ *Id.*

⁷ 18 C.F.R. § 385.214(c)(1) (2017).

⁸ *Tenn. Gas Pipeline Co., L.L.C.*, 162 FERC ¶ 61,167, at PP 50-51 (2018).

⁹ 18 C.F.R. § 385.214(d) (2017).

III. Discussion

10. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c), and (e) of section 7 of the NGA.¹⁰

A. Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.¹¹ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. It explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

¹⁰ 15 U.S.C. §§ 717f(c), (e) (2012).

¹¹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), clarified, 90 FERC ¶ 61,128 (2000), further clarified, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

13. As indicated above, the threshold requirement under the Certificate Policy Statement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Columbia proposes to charge its existing applicable rates under Rate Schedule FTS as the recourse rates for service on the Eastern Panhandle Expansion Project. As discussed below, it appears that an incremental rate appropriately calculated to recover the project's estimated cost of service would exceed Columbia's existing applicable Rate Schedule FTS rates. In such instances, it is general Commission policy to require use of the incremental rate as the initial recourse rate for project service¹² in order to prevent subsidization by existing shippers. However, the Commission can also protect Columbia's existing shippers from subsidizing the proposed expansion project by denying Columbia's request for a predetermination that it may roll the cost of the expansion into its system rates in a future rate case. We do so below, thus ensuring that existing customers will not be at risk of subsidizing the project. Based on the above, we find existing shippers will not subsidize service on the proposed project, and we find that the threshold no-subsidy requirement has been met.

14. Next, we find that Columbia has designed the Eastern Panhandle Expansion Project to provide the expansion services without adversely affecting Columbia's existing customers and services. None of Columbia's existing customers have presented any concerns that the Eastern Panhandle Expansion Project will result in degradation of their service. Nor is there any evidence that Columbia's proposed project will displace existing service on other pipelines, and no other pipelines or their customers have objected to Columbia's proposal.

15. Columbia has proposed to locate the project facilities within existing rights-of-way where possible, which we find will minimize impacts on affected landowners and communities. Columbia will also coordinate with landowners to negotiate agreements for replacing items that are removed along the construction right-of-way.¹³ As described in the EA, the proposed project affects only about 61 acres of land for construction and 26 acres of land for operation.¹⁴ Accordingly, we find that Columbia has taken sufficient measures to minimize the impacts of the project on landowners and communities.

16. The Eastern Panhandle Expansion Project will enable Columbia to provide up to 47,500 Dth/d of incremental firm transportation service to Mountaineer Gas, which will

¹² See *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,229, at P 14 (2017).

¹³ EA at 67.

¹⁴ See EA at Appendix F.

enter into a contract for service with an initial term of 20 years. Based on the benefits the project will provide and the lack of effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, the Commission finds that Columbia's proposed project satisfies the criteria of Certificate Policy Statement. Consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, the Commission finds that the public convenience and necessity requires approval of Columbia's proposal under section 7 of the NGA, as conditioned in this order.

B. Rates

1. Initial Recourse Rates

17. Columbia proposes to use its existing system-wide rates for firm transportation service under Rate Schedule FTS. Columbia's monthly base reservation charge as of January 31, 2019, will be \$6.722 per Dth,¹⁵ and its base commodity charge is \$0.0104 per Dth.¹⁶ Columbia did not provide an illustrative incremental charge calculated to recover project costs, but it did provide an estimated first-year cost of service for the project of \$3,924,005,¹⁷ reflecting a depreciation rate of 1.5 percent per its settlement approved in Docket No. RP12-1021-000¹⁸ and a pre-tax multiplier of 12.98 percent as approved in Docket No. RP95-408-013.¹⁹ Using the proposed cost of service and annual billing

¹⁵ See Columbia's Application, Exhibit N, Page 1 of 6; see also *Columbia Gas Transmission L.L.C.*, 154 FERC ¶ 61,208, at P 7 (2016) (approving the Modernization II Settlement in Docket No. RP16-314, which provides for the resetting of base rates).

¹⁶ See Columbia's Application, Exhibit N, Page 1 of 6.

¹⁷ *Id.* Based on Columbia's June 22, 2017 Data Response to Question 2 of Staff's June 16, 2017 data request, Columbia does not have any variable costs.

¹⁸ See *Columbia Gas Transmission, L.L.C.*, 142 FERC ¶ 61,062 (2013); see also Columbia's Application, Exhibit N, Page 2 of 6.

¹⁹ See *Columbia Gas Transmission, Corp.*, 79 FERC ¶ 61,044 (1997); see also Columbia's Application, Exhibit N, Page 6 of 6.

determinants, staff calculated an illustrative incremental base reservation charge,²⁰ which is higher than the existing Rate Schedule FTS base reservation charge of \$6.722 per Dth.

18. In a January 19, 2018 response to a staff data request, Columbia provided an adjusted cost of service to reflect changes in the Federal Tax Code under the Tax Cuts and Jobs Act of 2017,²¹ which became effective January 1, 2018.²² Columbia's work papers show that the effect of the tax code change is an increase in the estimated first-year cost of service to \$3,962,402.²³ In the response, Columbia explains that because the pre-tax rate of return was derived through a black-box settlement and lacked a statement of the assumptions pertaining to capital structure and rates of return on debt and equity, the cost of service did not have a specific line item for tax allowance that would be directly impacted by the change in the federal tax rate.²⁴ Therefore, Columbia only calculated the impact to the accumulated deferred income tax to reflect the new 21 percent corporate tax rate.²⁵ The lower accumulated deferred income tax amount causes a slightly higher annual cost-of-service for the new facilities²⁶ and thus, does not change our expectation that a properly calculated incremental reservation charge for

²⁰ The illustrative incremental monthly reservation charge was calculated by dividing the first year demand cost of service of \$3,924,005 by the annual billing determinants of 570,000 Dth (47,500 Dth/d x 12 months).

²¹ Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

²² Columbia is required to follow the procedures established in the Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate, Final Rule issued on July 18, 2018 in Docket No. RM18-11-000.

²³ Columbia's January 19, 2018 Data Response of Staff's January 16, 2018 Data Request.

²⁴ *Id.*

²⁵ *See id.*

²⁶ *Id.* Application of the historic pre-tax rate of return to the increased rate base, which resulted from the reduction in the accumulated deferred income tax ADIT, produces an increased pre-tax rate of return on rate base.

project service would be higher than Columbia's existing applicable Rate Schedule FTS charge.

19. As described above, general Commission policy requires an incremental recourse rate be established when the incremental rate would be higher than the applicable system rate.²⁷ However, since our denial of Columbia's request for a predetermination in favor of rolled-in rate treatment will adequately shield existing customers from any risk of subsidization, the Commission will approve Columbia's proposal to use the applicable system reservation rate as the initial rate for project service.²⁸ Columbia is prohibited from recovering any costs associated with the Eastern Panhandle Expansion Project from its existing customers unless it is able to demonstrate in a future NGA section 4 rate proceeding that doing so will not result in subsidization of the project by existing customers.

20. The Commission also grants Columbia's request to establish its existing system commodity charge as the recourse commodity charge for the project.

2. Retainage Rates and Surcharges

21. Columbia proposes to charge the applicable system fuel rates for firm service on the project. In support of its proposal, Columbia presented a fuel study,²⁹ as well as a data response,³⁰ that show that because the project is operationally a backhaul, the estimated company use gas for the project will be reduced by 238,345 Dth/year, resulting in a retainage rate which is less than the system retainage rate. Therefore, Columbia's use of its system-wide retainage rate for project service is approved.

22. Columbia also proposes to charge Mountaineer Gas its generally-applicable transportation cost rate adjustment (TCRA), electric power cost adjustment (EPCA), and

²⁷ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,745.

²⁸ See, e.g., *Tex. Gas Transmission L.L.C.*, 154 FERC ¶ 61,235, at P 15 (2016).

²⁹ See Columbia's Application, Exhibit Z.

³⁰ See Columbia's June 22, 2017 data response to Question 1 of Staff's June 16, 2017 data request.

operational transaction rate adjustment (OTRA) surcharges.³¹ Columbia shows in the application³² that the increased billing determinants, along with zero additional costs due to the project, will result in a decrease in each of these surcharges in subsequent tracker filings.³³ Therefore, the Commission grants Columbia's request to charge its generally-applicable TCRA, EPCA, and OTRA surcharges.

3. Pre-Determination of Rolled-In Rates

23. Columbia requests a pre-determination that it may roll the project's costs into its system-wide rates in its next NGA section 4 general rate proceeding. In support of this request, Columbia shows an estimated first-year cost of service of \$3,924,005 and projected revenues of \$3,984,804 (which exceed the estimated cost of service by \$60,799).³⁴

24. To receive a pre-determination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. Accordingly, a pipeline must show that the revenues to be generated by an expansion project will exceed the costs of the project. In making this determination as to the effect of rolling in the costs of a project into the pipeline's system rates in a future NGA section 4 proceeding, we compare the cost of the project to the generated revenues using actual contract volumes and either the maximum recourse rate or the actual negotiated

³¹ See Columbia's Application, at 8.

³² See Columbia's Application, Exhibit Z.

³³ Columbia's tariff provisions require that Columbia true-up the surcharges annually or semi-annually.

³⁴ While Columbia revised its estimated first-year cost of service to \$3,962,402, we will base our comparison of revenues and costs on the original estimated revenues and cost of service because Columbia only partially adjusted its cost of service to reflect the provisions of the 2017 Tax Cuts and Jobs Act.

rate, if the negotiated rate is less than the recourse rate.³⁵ In this case, the shippers have agreed to pay the maximum recourse rate.³⁶

25. We will deny Columbia a predetermination of rolled-in rate treatment for the project. As explained above, Columbia proposes to establish its existing reservation rate as the initial recourse rate for service on the project even though the existing rate is lower than an illustrative incremental reservation rate calculated to recover the project's cost of service. Under these circumstances, it appears that the existing reservation rate will not fully recover the fixed costs of the project. Although Columbia's January 19, 2018 data response shows that the projected \$3,984,804 in revenue exceeds the project's cost of \$3,962,402, Columbia includes \$153,264 of commodity revenue (based on a load factor of 85 percent) in its revenue total. While we presume demand revenue as guaranteed for the purpose of conducting a rolled-in rate analysis, the same is not true of commodity revenue, which will only be received to the extent gas actually flows. Thus, for the purposes of determining whether to issue a predetermination that a pipeline may roll the costs of an expansion project into rates paid by existing system customers, we find it inappropriate to include estimated commodity revenues. With the commodity revenues excluded, it no longer appears that revenues will exceed costs.³⁷ Therefore, we will deny a predetermination of rolled-in rate treatment, without prejudice to Columbia showing in a section 4 rate case that rolling project costs into system rates will not result in subsidization of the project by existing customers.

4. Reporting Incremental Costs

26. The Commission will require Columbia to keep separate books and accounting of costs and revenues attributable to the proposed incremental project services and capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.³⁸ The books should be maintained with applicable cross-reference and the information must be in sufficient detail so that the data can be identified

³⁵ *Natural Gas Pipeline Co. of America, L.L.C.*, 154 FERC ¶ 61,220, at P 25 (2016).

³⁶ See Columbia's Application at 3.

³⁷ This result is consistent with the fact that an appropriately calculated incremental charge for the project is higher than existing system charges.

³⁸ 18 C.F.R. § 154.309 (2017).

in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³⁹

C. Environmental Analysis

27. On April 25, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Eastern Panhandle Expansion Project and Request for Comments on Environmental Issues* (Notice of Intent). The notice was published in the Federal Register⁴⁰ and mailed to interested stakeholders, including: federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

28. The primary issues raised during scoping included opposition to the expanded use of fossil fuels in lieu of increased reliance on renewable energy and concerns regarding health risks associated with natural gas sourced from hydraulic fracturing. More specific concerns raised included the potential impacts related to the proposed horizontal directional drill (HDD) crossing of the Potomac River and Chesapeake and Ohio Canal Historic Park (C&O Canal).

29. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁴¹ Commission staff prepared an EA for Columbia's proposal. The EA was prepared with the cooperation of the U.S. National Park Service (NPS) and the U.S. Environmental Protection Agency (EPA). The EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received in response to the Notice of Intent were addressed in the EA.

³⁹ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

⁴⁰ *Notice of Intent to Prepare an Environmental Assessment for the Proposed Eastern Panhandle Expansion Project and Request for Comments on Environmental Issues*, 82 Fed. Reg. 20,470 (May 2, 2017).

⁴¹ 42 U.S.C. §§ 4321 *et. seq.* (2012); *see also* 18 C.F.R. pt. 380 (2017) (Commission's regulations implementing NEPA).

30. The EA was issued for a 30-day comment period and placed into the public record on January 26, 2018. The Commission received comments on the EA from: National Parks Conservation Association (Conservation Association); EPA; and Potomac Riverkeeper Network, Upper Potomac Riverkeeper, Waterkeepers Chesapeake, Chesapeake Climate Action Network and Food and Water Watch (collectively, Potomac Riverkeeper Network). Nine individuals also submitted comments. The Commission's consideration of these comments is summarized in the following discussion.

1. Threatened and Endangered Species

31. On April 2, 2018, and August 14, 2017, the U.S. Fish and Wildlife Service, West Virginia and Chesapeake Bay Field Offices, submitted letters to the Commission providing concurrence with the Commission's determination of effect for federally listed species potentially affected by the project, which concludes consultation under section 7 of the Endangered Species Act. For this reason, we have not included Environmental Condition 15 of the EA as a condition of this Order.

2. Horizontal Directional Drilling

32. Potomac Riverkeeper Network, Conservation Association, and others express concerns that the EA insufficiently considered the potential impacts on public health, safety, and the environment associated with an inadvertent HDD "blowout," which could release large volumes of drilling fluid, or an accidental gas leak or explosion of the operating pipeline, particularly given that construction would occur in an area that contains a karst landscape.⁴² Commenters assert that Columbia's HDD Contingency Plan to minimize the impacts of an inadvertent release into the Potomac River or adjacent habitat should not be taken "at face value," and that staff "should have independently assessed the risks and appropriate mitigation."⁴³

33. Staff did not take Columbia's HDD findings at face value; rather, it independently reviewed the HDD Contingency Plan, as it does all studies, reports, and plans that inform the Commission's ultimate decision, and found that the HDD Contingency Plan was

⁴² Potomac Riverkeeper Network February 26, 2018 Comments at 25, 27-28; *see also* Conservation Association February 26, 2018 Comments. Karst geology is characterized by the presence of sinkholes, caverns, and in some cases, irregular, pinnacled bedrock. EA at 30.

⁴³ Potomac Riverkeeper Network February 26, 2018 Comments at 25.

acceptable.⁴⁴ Moreover, the EA discusses the HDD process, potential for adverse effects, and mitigation measures set forth in the HDD Contingency Plan in the event of an inadvertent HDD incident.⁴⁵

34. Conditions pertaining to the HDD were analyzed in the project's HDD Feasibility Report⁴⁶ and Karst Survey Report,⁴⁷ which staff independently reviewed. Additionally, the EA discussed the subsurface conditions pertaining to the project.⁴⁸ While some voids were observed in the rock cores in the location of the proposed HDD under the Potomac River, they were generally small and located well above the expected depth of the pipeline bore.⁴⁹ Columbia's Karst Mitigation Plan⁵⁰ was developed to minimize potential impacts associated with pipeline construction, including HDD. We find that the EA appropriately addressed the risk and potential impacts associated with the HDD and that, with Columbia's proposed design and mitigation, the HDD will not have significant impacts on the environment.⁵¹

⁴⁴ EA at 43.

⁴⁵ See EA at 42-45.

⁴⁶ Columbia's July 12, 2017 Response to June 22, 2017 data request, HDD Feasibility Report at Vol. 1 Attach. 8.

⁴⁷ Columbia's July 12, 2017 Response to June 22, 2017 Data Request, Karst Survey Report and Karst Mitigation Plan at Vol. 1 Attach. 12.

⁴⁸ See EA at 31.

⁴⁹ *Id.*

⁵⁰ Columbia's July 12, 2017 Response to June 22, 2017 Data Request, Karst Survey Report and Karst Mitigation Plan at Vol. 1 Attach. 12.

⁵¹ Although adverse impacts can result if an inadvertent release occurs in environmentally sensitive areas or in substantial volumes, it is not likely to occur because Columbia would implement measures identified in its HDD Contingency Plan in such circumstances. EA at 44.

3. Connected, Cumulative, and Similar Actions

35. The Potomac Riverkeeper Network asserts the Mountaineer Eastern Panhandle Expansion Project (Mountaineer Project)⁵² – involving the construction of non-jurisdictional natural gas pipeline facilities in West Virginia – is a connected, cumulative,⁵³ or similar action which should have been reviewed in the EA.⁵⁴ We disagree.

36. The Council on Environmental Quality's (CEQ) NEPA regulations state that the scope of review in a NEPA analysis should encompass connected, cumulative, and similar actions.⁵⁵ Actions are connected if they: (1) “[a]utomatically trigger other actions which may require [an EIS]”; (2) “[c]annot or will not proceed unless other actions are taken previously or simultaneously;” or (3) “[a]re interdependent parts of a larger action and depend on the larger action for their justification.”⁵⁶ CEQ’s requirement that an agency consider connected actions in a single environmental document is “to prevent the government from ‘segment[ing]’ its *own* ‘federal actions into

⁵² Mountaineer Gas intends to construct and operate approximately 23 miles of 10-inch-diameter natural gas pipeline in Morgan and Berkeley Counties, West Virginia. EA at 22. The non-jurisdictional pipeline will interconnect with Columbia’s Eastern

Panhandle Expansion Project. EA at 23. Construction for the Mountaineer Project is expected to begin in 2018. *Id.*

⁵³ Although Potomac Riverkeeper Network states that the EA does not sufficiently consider the Mountaineer Project as a “cumulative *action*,” its arguments appear to challenge the adequacy of the cumulative *impacts* analysis in the EA. *See* Potomac Riverkeeper Network February 26, 2018 Comments at 6. These arguments are addressed in the cumulative impact discussion, below.

⁵⁴ *See* Potomac Riverkeeper Network February 26, 2018 Comments at 2-6.

⁵⁵ 40 C.F.R. § 1508.25(a)(1)-(3) (2017).

⁵⁶ *Id.* § 1508.25(a)(1).

separate projects and thereby fail[ing] to address the true scope and impact of the activities that should be under consideration.”⁵⁷

37. Accordingly, by definition, a connected action must be a federal action. As the D.C. Circuit Court of Appeals has explained, the connected action regulation “does not dictate that NEPA review encompass private activity[.]”⁵⁸ Notwithstanding Potomac Riverkeeper Network’s disagreement with the D.C. Circuit’s interpretation of the CEQ regulation,⁵⁹ the Mountaineer Project is not a federal action and therefore is not a connected action as contemplated by CEQ regulations.

38. We also disagree that the Mountaineer Project is a “similar action” that must be included in the EA, as contemplated by CEQ regulations. Similar actions are those “actions, which, when viewed with other reasonably foreseeable or proposed *agency actions*, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.”⁶⁰ Potomac Riverkeeper Network asserts that the Mountaineer Project and the proposed action are similar actions because they share common timing and geography.⁶¹ However, the Mountaineer Project is not an “agency action,” and therefore, is not a similar action under CEQ regulations.

⁵⁷ *Big Bend Conservation Alliance v. Fed. Energy Reg. Comm’n*, No. 17-1002 (D.C. Cir. July, 2018) (“The connected-actions doctrine does not require the aggregation of federal and non-federal actions.”); *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 49-50 (D.C. Cir. 2015) (emphasis added) (quoting *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014)).

⁵⁸ *Id.* at 49.

⁵⁹ Potomac Riverkeeper Network February 26, 2018 Comments at 5.

⁶⁰ 40 C.F.R. § 1508.25(a)(3) (2017) (emphasis added).

⁶¹ Potomac Riverkeeper Network February 26, 2018 Comments at 4.

39. Nevertheless, we note that the EA discussed the Mountaineer Project to provide information to stakeholders and the public.⁶² Additionally, as discussed below, the EA considers the cumulative impacts associated with the Mountaineer Project on a number of resources.⁶³

4. Indirect Impacts

40. Potomac Riverkeeper Network comments that the EA fails to analyze how the proposed project will likely further the development of gas shale extraction, and the “environmental effects of this reasonably foreseeable upstream indirect impact,” including greenhouse gas emissions impacts.⁶⁴

41. CEQ’s regulations require federal agencies to examine the indirect impacts of proposed actions.⁶⁵ Indirect effects are defined as those “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”⁶⁶ Additionally, indirect effects “may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”⁶⁷ Accordingly, to determine whether an impact should be studied as an

⁶² EA at 22-23 (providing a description of the non-jurisdictional facilities and information relating to the Mountaineer Project, while noting that “the Commission has no authority to approve or deny the Mountaineer Project and no ability to require any avoidance or minimization of related impacts[.]”).

⁶³ See, e.g., EA at 92 (Section B (8.0) – Cumulative Impacts); EA at 92 (Section B (8.1) – Cumulative Impacts: Soils); EA at 93 (Section B (8.2) – Cumulative Impacts: Waterbodies and Wetlands); EA at 94 (Section B (8.3) – Cumulative Impacts: Vegetation, Fisheries, Wildlife, and Special Status Species).

⁶⁴ Potomac Riverkeeper Network February 26, 2018 Comments at 8-12.

⁶⁵ See 40 C.F.R. § 1508.25(c) (2017).

⁶⁶ *Id.* § 1508.8(b).

⁶⁷ *Id.*

indirect impact, the Commission must determine whether it is: (1) caused by the proposed action; and (2) reasonably foreseeable.⁶⁸

42. With respect to causation, “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause”⁶⁹ in order “to make an agency responsible for a particular effect under NEPA[.]”⁷⁰ As the Supreme Court explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”⁷¹ Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if “the causal chain is too attenuated.”⁷² Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”⁷³

43. If an effect is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision,” then that effect is deemed to be

⁶⁸ See *id.*; see also *id.* § 1508.25(c).

⁶⁹ *U.S. Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, at 767 (2004) (*Pub. Citizen*) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, at 774 (1983)).

⁷⁰ *Pub. Citizen*, 541 U.S., at 767.

⁷¹ *Id.*; see also *Sierra Club v. FERC*, 827 F.3d 36 at 46 (D.C. Cir. 2016) (*Freeport LNG*) (finding that the Commission need not examine everything that could conceivably be a but-for cause of the project at issue); *Sierra Club v. FERC*, 827 F.3d 59, 68 (D.C. Cir. 2016) (*Sabine Pass LNG*) (recognizing that the Commission’s order authorizing the construction of liquefied natural gas export facilities is not the legally relevant cause of increased production of natural gas).

⁷² *Metro. Edison Co.*, 460 U.S. at 774.

⁷³ *Pub. Citizen*, 541 U.S. at 770; see also *Freeport LNG*, 827 F.3d at 49 (affirming that *Public Citizen* is explicit that the Commission need not consider effects, including induced production, that could only occur after intervening action by the DOE); *Sabine Pass LNG*, 827 F.3d at 68 (same); *EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016) (same).

“reasonably foreseeable.”⁷⁴ Although NEPA requires “reasonable forecasting,”⁷⁵ an agency “is not required to engage in speculative analysis”⁷⁶ or “to do the impractical, if not enough information is available to permit meaningful consideration.”⁷⁷

44. The Commission has consistently concluded in natural gas infrastructure proceedings that the potential environmental effects resulting from natural gas development are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations.⁷⁸ A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if: (1) the proposed pipeline would transport new production from a specified production area; and (2) that production would not occur in the absence of the proposed pipeline (i.e., there will be no other possible way to move the gas).⁷⁹ To date, the Commission

⁷⁴ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992); *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005) (quoting *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992)).

⁷⁵ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944, 962 (9th Cir. 2003)).

⁷⁶ *Id.* at 1078.

⁷⁷ *Id.* (quoting *Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006) (internal quotation marks and citation omitted)).

⁷⁸ See, e.g., *Central New York Oil and Gas Co., L.L.C.*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2012); *Constitution Pipeline Co., L.L.C.*, 154 FERC ¶ 61,046, at P 147 (2016); *Empire Pipeline, Inc.*, 150 FERC ¶ 61,181, at PP 109-111 (2015), *order on reh'g*, 153 FERC ¶ 61,379 (2015); *Rockies Express Pipeline, L.L.C.*, 150 FERC ¶ 61,161, at PP 38-40 (2015), *reh'g denied*, 155 FERC ¶ 61,018 (2016); *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at PP 52-53 (2014).

⁷⁹ See cf. *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394, 400 (9th Cir. 1989) (upholding the environmental review of a golf course that excluded the impacts of an adjoining resort facilities); see also *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 580 (9th Cir. 1998) (concluding that increased air traffic resulting from airport

has not been presented with a proposed pipeline project that the record shows will cause the predictable development of gas reserves.

45. The record in this proceeding does not demonstrate the requisite causal relationship between future incremental natural gas development and the proposed project. Natural gas production and transportation facilities are components of the general supply chain necessary to provide domestic natural gas to the market.⁸⁰ This does not mean, however, that approving this particular project will induce further shale gas production. Rather, new drilling may stem from a number of factors, including, domestic natural gas prices, production costs, transportation alternatives.⁸¹

46. Even presuming a sufficient causal relationship existed, the scope of the impacts from any such production is not reasonably foreseeable. As the Commission has consistently explained, we generally do not have sufficient information to determine the origin of the gas that will be transported onto a pipeline.⁸² The states, rather than the

expansion plan was not an indirect, “growth-inducing” impact); *City of Carmel-by-the-Sea v. U.S. Dep’t of Transportation*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the proposed freeway’s potential to induce additional development).

⁸⁰ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 60 (2018).

⁸¹ *Rockies Express Pipeline L.L.C.*, 150 FERC ¶ 61,161, at P 39 (2015); see also *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045 (D. Minn. 2010) (recognizing that the U.S. Department of State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil sands production due to the lack of a causal relationship because, among other things: (1) production being driven by oil prices; (2) concerns surrounding the global supply of oil; (3) market potential; and (4) the cost of production); *Fla. Wildlife Fed’n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (concluding that the EIS was not defective by the

lack of consideration of indirect impacts caused by something other than the proposed action, such as when market demand, not a highway, would induce development).

⁸² *Tenn. Gas Pipeline Co.*, 156 FERC ¶ 61,156, at P 85 (2016).

Commission, have jurisdiction over the production of natural gas⁸³ and thus would be most likely to have the information necessary to reasonably foresee future production.⁸⁴ Moreover, there are no forecasts in the record which would enable the Commission to meaningfully predict production-related impacts, many of which are highly localized. To meaningfully consider impacts, the Commission would need to not only know the region of the production, but also the specific footprint and resources that would be affected. Accordingly, the potential impacts of natural gas production are not reasonably foreseeable because they are “so nebulous” that we “cannot forecast [their] likely effects” in the context of an environmental analysis of the impacts related to a proposed interstate natural gas pipeline.⁸⁵ A broad analysis, premised on generalized assumptions in lieu of

⁸³ See 15 U.S.C. § 717(b) (2012).

⁸⁴ *Tenn. Gas Pipeline Co.*, 156 FERC ¶ 61,156, at P 85 (2016). That states, not the Commission, have jurisdiction over natural gas production and associated development (including siting and permitting) supports the conclusion that information about the scale, timing, and location of such development and potential environmental impacts are even more speculative. *See Sierra Club v. U.S. Department of Energy*, 867 F.3d 189, 200 (D.C. Cir. 2017) (stating that DOE’s obligation under NEPA to “drill down into increasingly speculative projections about regional environmental impacts [of induced natural gas production] is also limited by the fact that it lacks any authority to control the locale or amount of export-induced gas production, much less any of its harmful effects”) (citing *cf. Pub. Citizen*, 541 U.S. at 768).

⁸⁵ *Habitat Education Center v. U.S. Forest Service*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with enough specificity to make their consideration meaningful need not be included in the environmental analysis); *see also Sierra Club*, 867 F.3d at 198-199 (accepting DOE’s “reasoned explanation” as “to why the indirect effects pertaining to induced natural gas production were not reasonably foreseeable[,]” as DOE noted the difficulty of predicting both: (1) “the incremental quantity of natural gas that might be produced”; and (2) “where, at the local level, such production might occur[,]”; further, DOE’s “determination that an economic model estimating localized impacts would be far too speculative to be useful” was afforded deference). We note that there is publically available information that identifies potential environmental impacts associated with unconventional natural gas production. U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States*, 79 Fed. Reg. 48,132 (Aug. 15, 2014) (DOE Addendum), <http://energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

reasonably specific information, would fail to furnish meaningful assistance to the Commission in its decision making, such as when evaluating possible alternatives to a specific proposal.⁸⁶

47. For all of these reasons, we find that any impacts from future natural gas development, including GHG emissions impacts, are not indirect impacts of the Eastern Panhandle Expansion Project.

5. Cumulative Impacts

48. Potomac Riverkeeper Network asserts that the Commission improperly limited the EA's geographic and temporal scope to its analysis of the cumulative impacts of the pipeline and thus failed to include future gas shale development in the analysis.⁸⁷ We disagree.

49. CEQ defines "cumulative impact" as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . ."⁸⁸ The "determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies."⁸⁹ CEQ has explained that "it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are

⁸⁶ *Rockies Express Pipeline L.L.C.*, 150 FERC ¶ 61,161, at P 40 (2015); *see also Sierra Club*, 867 F.3d at 198 (recognizing that the determination of "reasonably foreseeable" effects entails "engag[ing] in reasonable forecasting and speculation" by taking into account the "usefulness of any new potential information to the decision making process") (internal citations omitted).

⁸⁷ Potomac Riverkeeper Network February 26, 2018 Comments at 13-14.

⁸⁸ 40 C.F.R. § 1508.7 (2017).

⁸⁹ *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976).

truly meaningful.”⁹⁰ Further, a cumulative impact analysis need only include “such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible[.]”⁹¹ An agency’s analysis should be commensurate to the magnitude of the proposed action’s environmental impacts; proposed actions that will have no significant direct and indirect impacts usually call for only a limited cumulative effects analysis.⁹²

50. In considering cumulative impacts, CEQ advises agencies to: (1) identify the cumulative effects of a proposed action; (2) establish the geographic scope for analysis; (3) establish the time frame for analysis, equal to the timespan of a proposed project’s direct and indirect impacts; and finally, (4) identify other actions that potentially affect the same resources, ecosystems, and human communities affected by the proposed action.⁹³ The geographic scope of our cumulative impacts analyzes vary by case and resource, based on the facts presented.⁹⁴

51. Consistent with CEQ’s guidance, the EA established the geographic scope for each resource area that might be cumulatively impacted, based on the varied nature, magnitude, and duration of these impacts. For example, the EA noted that the impacts on soils would, in large part, be contained within the proposed project’s workspaces, and as

⁹⁰ CEQ, Considering Cumulative Effects Under the National Environmental Policy Act at 8 (January 1997) (1997 CEQ Guidance), https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf.

⁹¹ *Natural Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d. Cir. 1975).

⁹² See CEQ, Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis at 3 (June 24, 2005) http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf.

⁹³ 1997 CEQ Guidance at 11; *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 33 (2018).

⁹⁴ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 34 (2018). Appendix G of the EA identifies *Past, Present, and Reasonably Foreseeable Projects within the Geographic Scopes of the Eastern Panhandle Expansion Project*. EA at Appendix G.

such, other projects/actions were evaluated within the proposed project's construction footprint.⁹⁵ The EA also found that the impacts on water resources could extend outside of the workspaces, but would also be contained to a relatively small area.⁹⁶ Accordingly, the EA established the Hydrologic Unit Code (HUC) 12 subwatershed as the appropriate geographic scope for the cumulative impact analysis.⁹⁷ Consequently, other projects/actions within the HUC 12 subwatersheds crossed by the project were evaluated.⁹⁸

52. We find that the EA's cumulative impact analysis identified an appropriate geographic scope that was based on the limited scope and minimal environmental footprint of the proposed project.⁹⁹ The EA addressed the potential cumulative impacts associated with a number of current, proposed, or reasonably foreseeable future development activities, including the Mountaineer Project.¹⁰⁰ Specifically, the EA analyzed the cumulative impacts of the Mountaineer Project on soil resources, waterbodies and wetlands, and vegetation.¹⁰¹ Moreover, the EA disclosed the known overall environmental impacts of the Mountaineer Project, to inform stakeholders and decision makers.¹⁰²

⁹⁵ EA at 91.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See EA at 90. For all of the reasons we discuss in the indirect impacts section above, the impacts from natural gas production are not reasonably foreseeable, and therefore are not considered in the cumulative impacts analysis.

¹⁰⁰ EA at 91-92; *see also* EA at Appendix G.

¹⁰¹ EA at 92-94.

¹⁰² See EA at 23.

53. Accordingly, we agree with the EA's conclusion that most of the impacts of the project would be largely limited to the 3.37-mile-long corridor along the pipeline and that therefore provided an appropriate geographic scope to analyze cumulative impacts.¹⁰³

6. Air Quality and Greenhouse Gas (GHG) Emissions

54. The EA estimated the potential air emissions from construction and operation of the proposed project and found that there would be no locally or regionally significant impacts on air quality.¹⁰⁴ The Potomac Riverkeeper Network contends that the EA's use of a Methane Global Warming Potential (GWP) of 25 is outdated.¹⁰⁵ Also, Potomac Riverkeeper Network states that both the 20-year GWP and the 100-year GWP should have been used in our assessment of methane GHG emissions.¹⁰⁶

The EA appropriately selected the GWP value for methane as 25 over a 100-year period¹⁰⁷ because this is the value EPA established on November 29, 2013, for reporting of GHG emissions.¹⁰⁸ EPA supported the 100-year time period over the 20-year period in its summary of comments and responses in the final rulemaking, *2013 Revisions to the Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or*

¹⁰³ See EA at 90.

¹⁰⁴ EA at 76-77.

¹⁰⁵ Potomac Riverkeeper Network February 26, 2018 Comments at 15.

¹⁰⁶ *Id.* at 16.

¹⁰⁷ See EA at 77. The GWP is a ratio relative to CO₂ of a particular GHG's ability to absorb solar radiation as well its residence time within the atmosphere. See Intergovernmental Panel on Climate Change Fourth Assessment Report (AR4), Climate Change Synthesis 2007 Report (2008), http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_synthesis_report.htm.

¹⁰⁸ See 2013 Revisions to the Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements, 78 Fed. Reg. 71,904, at 71,909 (Nov. 29, 2013).

Substantially Revised Data Elements, establishing the methane GWP at 25.¹⁰⁹ Similarly, in this final rulemaking, EPA supported the adoption of the published Intergovernmental Panel on Climate Change's (IPCC) Fourth Assessment Report (AR4, 2007) GWP values over the Fifth Assessment Report (AR5, 2014) values.¹¹⁰ EPA acknowledged the Fifth Assessment Report could lead to more accurate assessments of climate impacts in the future; however, when balanced with the benefit of retaining consistency across national and international programs, EPA concluded that the possible gain in accuracy did not justify the loss of consistency in reporting.¹¹¹ Further, EPA recognized that the loss of consistency would likely cause stakeholder confusion among the various GWPs used in different programs.¹¹² Since the Fourth Assessment Report is the formal method adopted by EPA in their rulemaking, we remain consistent with EPA's methodology relating to methane's global warming potential. EPA noted that it may consider adoption of the Fifth Assessment Report GWPs in the future;¹¹³ at which time, Commission staff will revisit the use of any revised EPA GWP values in its NEPA evaluations.

55. The Potomac Riverkeeper Network also asserts that while the EA provides estimates of the amount of downstream combustion emissions, it should have discussed the significance of these emissions, either through atmospheric models or the Social Cost of Carbon.¹¹⁴ We disagree.

¹⁰⁹ See *id.* at 71,913. The larger the value of GWP for a particular gas, the more it will warm the Earth in comparison to CO₂, over the particular time period being measured. U.S. Environmental Protection Agency, *Greenhouse Gas Emissions: Understanding Global Warming Potentials* (Feb. 14, 2017), <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>.

¹¹⁰ 2013 Revisions to the Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements, 78 Fed. Reg. 71,904, at 71910.

¹¹¹ *Id.* at 71,912.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Potomac Riverkeeper Network February 26, 2018 Comments at 17-20.

56. Climate change and GHG, including both direct and downstream emissions, are discussed in sections B.8.5¹¹⁵ and B.6.1¹¹⁶ of the EA, respectively. The EA recognizes the availability of an EPA-developed methodology to estimate the downstream GHG emissions from a project, assuming all of the gas to be transported is eventually combusted.¹¹⁷ The EA estimates the GHG emissions from the end-use combustion of the natural gas to be transported to obtain potential downstream GHG emissions.¹¹⁸

57. We also find that no standard methodology, including the Social Cost of Carbon tool, exists to determine how a project's contribution to greenhouse gas emissions would translate into physical effects on the environment for the purposes of evaluating the project's impacts on climate change.¹¹⁹ In the absence of an accepted methodology, the Commission is unable to make a finding as to whether a specific quantity of greenhouse gas emissions presents a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.¹²⁰ Thus, the discussion in the EA is consistent with the CEQ regulations for "evaluating reasonably foreseeable significant adverse effects" when there is "incomplete or unavailable information."¹²¹

¹¹⁵ See EA at 96-97.

¹¹⁶ See EA at 75-77.

¹¹⁷ EA at 77.

¹¹⁸ *Id.*

¹¹⁹ See *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 67 (2018); see also *Fla. Se. Connection, L.L.C.*, 162 FERC ¶ 61,233, at PP 26-27, 30-51 (2018) (explaining that the Social Cost of Carbon tool is not appropriate and meaningful in the Commission's decision making) (LaFleur and Glick, Comm'rs, dissenting).

¹²⁰ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 67 (2018) (citing *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 158 FERC ¶ 61,145, at P 188 (2017)).

¹²¹ 40 C.F.R. § 1502.22 (2017).

58. Additionally, we cannot find a suitable method to attribute discrete environmental effects to GHG emissions.¹²² Integrated assessment models were developed to estimate certain global and regional physical climate change impacts due to incremental GHG emissions under specific socioeconomic scenarios.¹²³ The use of integrated assessment models to estimate global and broad regional physical climate change impacts from the project-related GHG emissions would be inappropriate.¹²⁴ This is because we would have to arbitrarily determine whether the models' outputs of the potential increase in atmospheric greenhouse gas concentration, rise in sea level, rise in sea water temperatures, or other calculated physical impacts would be significant for that particular pipeline project.¹²⁵ We are not aware of a widely accepted standard — which was established by international or federal policy, or by a recognized scientific body — to ascribe significance to a given rate or volume of GHG emissions.¹²⁶

59. Other models, such as atmospheric modeling used by the Intergovernmental Panel on Climate Change, Environmental Protection Agency, National Aeronautics and Space Administration, and others, are not reasonable for project-level analysis.¹²⁷ The ability to determine localized impacts from greenhouse gases by use of these models is not possible at this time.¹²⁸ Consequently, appropriate scientific methodologies are necessary in order for the Commission to quantify the related climate change effects.¹²⁹

60. Our decision not to use integrated assessment models or other atmospheric modeling methods is not any indication that the Commission is not cognizant of the

¹²² *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 68.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* P 69.

¹²⁸ *Id.*

¹²⁹ *Id.*

potentially severe consequences of climate change.¹³⁰ Further, this decision does not undermine our hard look at the effects of the Eastern Panhandle Expansion Project and our disclosure of these effects to the public, or undermine informed public comment or informed decision making.¹³¹ As we have previously stated, the Commission is committed to monitoring climate science, state and national targets, and climate models that may inform our decision making.¹³²

7. Purpose and Need for Project

61. Potomac Riverkeeper Network asserts that the EA did not provide an “independent assessment” of the need for the project as part of its review in order to assess alternatives.¹³³ It argues that the EA inappropriately “parrots Columbia’s statement that the [p]roject would meet the market demand growth. . .”¹³⁴ We disagree.

62. The CEQ regulations state that agencies “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”¹³⁵ Thus, the EA need only describe the purpose and need of the project to the extent necessary to inform its alternatives analysis. Courts have upheld federal agencies’ use of applicants’ project purpose and need as the basis for evaluating alternatives.¹³⁶ When an agency is asked to consider a specific plan, the needs

¹³⁰ *Id.* P 70.

¹³¹ *Id.*

¹³² *Id.*; see also *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013) (“Because current science does not allow for the specificity demanded . . . , the BLM was not required to identify specific effects on the climate in order to prepare an adequate EIS.”).

¹³³ Potomac Riverkeeper Network February 26, 2018 Comments at 23.

¹³⁴ *Id.*

¹³⁵ 40 C.F.R. § 1502.13 (2017).

¹³⁶ See, e.g., *City of Grapevine v. U.S. Dept’ of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994).

and goals of the parties involved in the application should be taken into account.¹³⁷ We recognize that a project's purpose and need should not be so narrowly defined as to preclude consideration of what may actually be reasonable alternatives.¹³⁸ Nonetheless, an agency need only consider alternatives that will bring about the ends of the proposed action, and the evaluation is "shaped by the application at issue and by the function that the agency plays in the decisional process."¹³⁹ Here, the EA's stated purpose and need for the project, to increase supply options and system reliability by providing firm transportation service with receipts from Texas Eastern Transmission's Marietta interconnect in Lancaster County, Pennsylvania to a proposed point of delivery meter station in Columbia's Market Area 25, located in Morgan County, West Virginia, provided an appropriate basis on which to evaluate the project's alternatives.¹⁴⁰

8. Alternatives

63. The Potomac Riverkeeper Network also contends that the EA does not adequately discuss all reasonable alternatives, including aboveground river crossings, expansion of other existing pipelines to service West Virginia customers, or clean energy alternatives that would avoid what they deem the significant adverse impacts that HDD construction under the Potomac River and C&O Canal might cause.¹⁴¹ Conservation Association and Potomac Riverkeeper Network contend that more information is needed to support the EA's dismissal of an aboveground alternative to crossing the river at the Route 522

¹³⁷ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

¹³⁸ See *id.* at 196.

¹³⁹ *Id.* at 195, 199.

¹⁴⁰ EA at 1-2.

¹⁴¹ Potomac Riverkeeper Network February 26, 2018 Comments at 20-23. For the reasons stated above, and contrary to Potomac Riverkeeper Network's assertion, HDD drilling under the Potomac and C&O Canal will not have significant adverse impacts. Although adverse impacts can possibly result in circumstances where inadvertent releases occur in environmentally sensitive areas or in substantial volumes, it is unlikely to occur as Columbia would carry out measures identified in its HDD Contingency Plan. EA at 44. The plan details procedures to be used in monitoring, containing and cleaning up any inadvertent releases of drilling fluid as well as contingency measures to be implemented in the event that an HDD is unsuccessful. *Id.*; see also EA at Appendix B.

Bridge, which they assert would “eliminate the need to employ HDD under the Potomac River and C&O Canal.”¹⁴²

64. As noted above, an agency’s purpose and need informs its choice of alternatives. The choice of alternatives, and the depth of discussion of those alternatives, must be reasonable.¹⁴³ CEQ advises, however, that “a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.”¹⁴⁴ An agency need only consider alternatives that will bring about the ends of the proposed action, and the evaluation is “shaped by the application at issue and by the function that the agency plays in the decisional process.”¹⁴⁵ Alternatives that are remote, conjectural, or do not meet the purpose or need of the proposed action may be eliminated so long as the agency briefly discusses the reasons for the elimination.¹⁴⁶

65. The EA’s omission of clean energy alternatives was appropriate because they could not feasibly achieve the projects’ aims, i.e., renewable energy measures could not transport natural gas. Thus, they were not considered or evaluated. As we have concluded with respect to other natural gas transportation infrastructure projects, we do not find that the potential for energy conservation and renewable energy sources to be practical alternatives.¹⁴⁷

¹⁴² Conservation Association February 26, 2018 Comments at 2; *see also* Potomac Riverkeeper Network February 26, 2018 Comments at 21.

¹⁴³ *Citizens Against Burlington, Inc.*, 938 F.2d at 196.

¹⁴⁴ CEQ, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (1981).

¹⁴⁵ *Citizens Against Burlington, Inc.*, 938 F.2d at 195, 199.

¹⁴⁶ See 40 C.F.R. § 1502.14(a) (2017).

¹⁴⁷ See, e.g., *Atlantic Coast Pipeline, L.L.C.*, 161 FERC ¶ 61,042, at P 57 and n. 91 (2017) (concluding that the potential for energy conservation, renewable energy resources and the availability of capacity on other pipelines were not “practical alternatives to the project”); *Mountain Valley Pipeline, L.L.C.*, 161 FERC ¶ 61,043, at P 43 (2017) (recognizing that “renewable energy is not a comparable replacement for the transportation of natural gas[.]”); *PennEast Pipeline Co. L.L.C.*, 162 FERC ¶ 61,053, at 212 (2018) (stating that “the proposed project’s purpose is to transport natural gas, and

66. We also find that the EA sufficiently explained the reason for not selecting the aboveground river crossing alternative.¹⁴⁸ As discussed in the EA, the aboveground crossing would extend the pipeline by more than two miles and require about 0.5 mile of the pipeline to be rerouted through a residential and commercial area, thus increasing impacts on nearby landowners.¹⁴⁹ Accordingly, we agree with the EA’s finding that the aboveground crossing alternative would not provide significant environmental advantages over the proposed action.¹⁵⁰

67. Potomac Riverkeeper Network also asserts that the EA should consider an alternative of routing a gas pipeline from the south in order to serve West Virginia customers.¹⁵¹ Potomac Riverkeeper Network states that this alternative – of providing an expansion of existing pipeline capacity owned by Columbia Pipeline Group – was considered in a Gas Pipeline Feasibility Project that was prepared by the Thrasher Group in consideration of possible alternatives to the Mountaineer Project.¹⁵² We note that no comments were received during the scoping process requesting that the Commission consider alternatives to the proposed route, route variations, or construction alternatives

electric generation from renewable energy resources is not a natural gas transportation alternative[.]”).

¹⁴⁸ See EA at 100-101.

¹⁴⁹ EA at 100.

¹⁵⁰ See EA at 101. Several commenters challenged as inconsistent the EA’s finding on the one hand that the “aboveground crossing attached to a bridge would also avoid impacts on the Potomac River,” while on the other hand concluding that the aboveground crossing “would not decrease the impact on the river in comparison to the proposed HDD crossing.” EA at 100. The language is consistent: the aboveground alternative crossing of the Potomac River is indeed unlikely to have adverse impacts on the Potomac River, while, for reasons discussed above, the proposed HDD crossing similarly is unlikely to have adverse impacts on the Potomac River. Even in the unlikely event that inadvertent releases occur in environmentally sensitive areas or in substantial volumes, it is unlikely to result in adverse impacts because Columbia would implement measures identified in its HDD Contingency Plan.

¹⁵¹ Potomac Riverkeeper Network February 26, 2018 Comments at 22.

¹⁵² See *id.*

for the project.¹⁵³ Potomac Riverkeeper Network’s February 26, 2018 comments on the EA are the first mention of this alternative route.¹⁵⁴ Nonetheless, it appears that any “feasible” expansion alternative, as discussed in the Thrasher report, would involve construction of additional pipeline facilities that would likely exceed the impacts of the proposed pipeline here.¹⁵⁵ Because the EA concludes that the HDD construction, with the conditions imposed, would have no significant impacts, we need not consider additional route alternatives beyond those analyzed in the EA.¹⁵⁶ Further, because neither the applicant nor any other entity has proposed to construct a project that routes a gas pipeline from the south in order to serve West Virginia customers, this is not a reasonable alternative that warrants further consideration.

68. We conclude that the EA addressed a reasonable range of alternatives. In addition to the No Action alternative, the EA considered system alternatives, route alternatives, variations and construction alternatives, and the Route 522 Bridge crossing alternative, as well as two alternative river crossing locations.¹⁵⁷ We agree with the EA’s findings that none of these alternatives provide a significant environmental advantage over the proposed action.

¹⁵³ EA at 100; *see also* 40 C.F.R. § 1508.25 (2017) (“Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement.”); 40 C.F.R. § 1501.7(a)(3) (2017) (stating that during the scoping process, the lead agency shall “[i]dentify and eliminate from detailed study the issues which are not significant . . .”).

¹⁵⁴ See Potomac Riverkeeper Network February 26, 2018 Comments at 22.

¹⁵⁵ One of the evaluation criteria used in the EA is whether or not the alternative could provide a significant environmental advantage over the proposed action. Here, the total construction impact of the proposed action is only 61 acres. We note that a single mile of alternative pipeline construction would affect between 9 and 12 acres and so an alternative could only involve the addition of between 5 and 7 miles of pipeline before its footprint would exceed that of the project proposed by Columbia.

¹⁵⁶ EA at 100. For these reasons, we disagree with Potomac Riverkeeper Network’s suggestion that we did not consider expansion alternatives on the grounds that they are non-jurisdictional and therefore inconsistent with 40 C.F.R. § 1502.14(c) (2017).

¹⁵⁷ EA at 99-102.

9. Environmental Impact Statement

69. Finally, the Potomac Riverkeeper Network contends that pursuant to the CEQ regulations, the Commission should have prepared an environmental impact statement (EIS) instead of an EA because three factors suggest the proposed action may have significant impacts: (1) the proposed pipeline may impact public health and safety; (2) the Potomac River is designated as an American Heritage River; and (3) the C&O Canal is listed on the National Register of Historic Places.¹⁵⁸

70. The CEQ regulations provide that whether a project's impacts on the environment will be considered "significant" and thus requiring an EIS, depends on both "context" and "intensity."¹⁵⁹ Context "means that the significance of an action must be analyzed in several contexts," including "the affected region, the affected interest, and the locality."¹⁶⁰ With regard to "intensity," the CEQ regulations set forth ten factors agencies should consider, including, as relevant here: (1) the extent to which a proposed action may adversely impact public health and safety;¹⁶¹ (2) "[u]nique characteristics of the geographic area such as historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas";¹⁶² and (3) "[t]he degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources."¹⁶³

71. None of the "intensity" factors cited by Potomac Riverkeeper Network are implicated here.¹⁶⁴ As discussed above, use of an HDD for the Potomac River crossing is not likely to result in harm to the Potomac River. Moreover, as noted in the EA, the

¹⁵⁸ Potomac Riverkeeper Network February 26, 2018 Comments at 29-30.

¹⁵⁹ 40 C.F.R. § 1508.27 (2017).

¹⁶⁰ *Id.* § 1508.27(a).

¹⁶¹ *Id.* § 1508.27(b)(2).

¹⁶² *Id.* § 1508.27(b)(3).

¹⁶³ *Id.* § 1508.27(b)(8).

¹⁶⁴ See Potomac Riverkeeper Network February 26, 2018 Comments at 29-30.

proposed project is not expected to have an impact on the historic nature or hydrologic value of the Potomac River.¹⁶⁵ Because the pipeline crosses approximately 116 to 148 feet below the ground surface of the C&O Canal, the proposed project is unlikely to adversely affect the site.¹⁶⁶ Furthermore, on July 25, 2017, the Maryland SHPO determined that the project would not have an adverse effect on historic properties.¹⁶⁷ The NPS provided comments to Columbia on the draft survey report, which Columbia addressed, and in a subsequent email dated October 24, 2017, the NPS indicated it had no further comments on the revised report.¹⁶⁸

72. Our regulations provide that while the Commission will normally prepare an environmental impact statement for “[m]ajor pipeline construction projects under section 7 of the Natural Gas Act using rights-of-way in which there is no existing natural gas pipeline[,]”¹⁶⁹ it will prepare an EA if it believes that the proposed action “may not be a major Federal action significantly affecting the quality of the human environment.”¹⁷⁰

73. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Columbia’s application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Consequently, an EIS is not required. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all

¹⁶⁵ EA at 43.

¹⁶⁶ EA at 73.

¹⁶⁷ *Id.*; see also Maryland Historical Trust July 25, 2017 Correspondence with the U.S. Army Corps of Engineers at 2 (stating “[a]s noted in the supplemental report, the proposed use of horizontal directional drilling (HDD) to install the pipeline 116-148 feet below the ground surface of the C&O Canal National Historical Park will satisfactorily avoid adverse impacts to any deeply buried cultural deposits that may be present”).

¹⁶⁸ EA at 73.

¹⁶⁹ 18 C.F.R. § 380.6(a)(3) (2017).

¹⁷⁰ *Id.* § 380.6(b); see also 40 C.F.R. §§ 1501.3-1501.4 (2017).

applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

74. The Chesapeake Climate Action Network (jointly, with Food and Water Watch, Potomac Riverkeeper Network, and Waterkeepers Chesapeake) and the Maryland Department of Environment urged the Commission to incorporate into this order Maryland's conditions to the Wetlands and Waterways permit issued to Columbia Gas in Maryland or otherwise similar conditions. Although we are not incorporating the conditions into this order, we encourage pipelines to adhere to state conditions for permits to the extent that such conditions do not conflict with the conditions of this certificate. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁷¹

75. At a hearing held on July 19, 2018, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Columbia, authorizing it to construct and operate the proposed facilities, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Columbia's:

¹⁷¹ See 15 U.S.C. § 717r(d) (2012) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with the Commission's regulatory authority over the transportation of natural gas is preempted); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

- (1) Completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Compliance with the environmental conditions listed in the appendix to this order; and
- (4) Filing written statements affirming that it has executed firm service agreement(s) for volumes and service terms equivalent to those in its precedent agreement, prior to commencing construction.

(C) Columbia's request to use its system-wide reservation charge and commodity charge as the recourse reservation charge is approved, as described above.

(D) Columbia's request to charge its currently effective retainage percentage, TCRA, EPCA, and OTRA system surcharges are approved, as described above.

(E) Columbia's request for a pre-determination of rolled-in rate treatment for the project in the next NGA general section 4 proceeding is denied, as described above.

(F) Columbia shall keep separate books and accounts of costs attributable to the proposed incremental services, as described above.

(G) Columbia shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Columbia. Columbia shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission. Commissioner LaFleur is concurring with a separate statement attached. Commissioner Glick is dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Columbia Gas Transmission, L.L.C.

Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Columbia Gas Transmission, L.L.C. (Columbia) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Columbia must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction,** Columbia shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the

environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Columbia shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Columbia's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Columbia's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipelines or aboveground facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Columbia shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, warehouse/storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*, and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;

- b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Columbia shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Columbia must file revisions to the plan as schedules change. The plan shall identify:
- a. how Columbia will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Columbia will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Columbia will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel and specific portion of Columbia's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Columbia will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Columbia shall employ at least one EI per construction spread. The EIs shall be:

- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order the correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of that Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Columbia shall file updated status reports with the Secretary on a **bi-weekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Columbia's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Columbia from other federal, state, or local permitting agencies concerning instances of noncompliance, and Columbia's response.

9. Columbia must receive written authorization from the Director of OEP **before commencing construction of any project facilities.** To obtain such authorization, Columbia must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Columbia must receive written authorization from the Director of OEP **before placing the project into service.** Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service,** Columbia shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Order conditions Columbia has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to construction,** Columbia shall file with the Secretary, for review and written approval by the Director of OEP, revised *Environmental Construction Standards* that are consistent with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* at sections III.E., V.A.3, V.A.4., and V.A.6.
13. **Prior to construction,** Columbia shall offer to conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for wells within 150 feet of any construction workspaces. Columbia shall also provide a temporary supply of water if the landowner's water supply is contaminated or damaged by construction activities. **Within 30 days of placing the facilities in service,** Columbia shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.
14. **Prior to construction,** Columbia shall file with the Secretary, for review and written approval by the Director of OEP, a revised plan for access road TAR-2 that avoids impacts on wetlands, or detailed justification for why wetland impacts

cannot be avoided and a detailed justification for the culvert replacement along access road PAR-1 and associated workspaces.

15. **Prior to any tree clearing during the migratory bird nesting season (April 1 - August 31),** Columbia shall file with the Secretary a Migratory Bird Conservation Plan developed in consultation with the FWS, along with documentation of consultation with the appropriate FWS field offices regarding project-related impacts on migratory bird species.
16. **Columbia shall not begin construction** of facilities and/or use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until:**
 - a. Columbia files with the Secretary:
 - i. remaining cultural resources survey report(s);
 - ii. site evaluation report(s) and avoidance/treatment plan(s), as required; and
 - iii. comments on the cultural resources reports and plans from the National Park Service and West Virginia State Historic Preservation Office.
 - b. The Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected.
 - c. The Commission staff reviews and the Director of OEP approves the cultural resources reports and plans and notifies Columbia in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials filed with the Commission **containing location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CUI//PRIV- DO NOT RELEASE.**"

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Columbia Gas Transmission, L.L.C.

Docket No. CP17-80-000

(Issued July 19, 2018)

LaFLEUR, Commissioner, *concurring*:

Today's order grants Columbia's request for authorization to construct and operate the Eastern Panhandle Expansion Project (Eastern Panhandle Project). I believe the project is in the public interest after carefully balancing the need for the project and its environmental impacts. For the reasons discussed below, I concur.

Columbia's 3.37 mile Eastern Panhandle Project was designed and configured to meet Mountaineer Gas' request for 47,500 dekatherms per day (Dth/day) of capacity. In this case, the Commission quantified and disclosed the upper-bound estimate of the downstream greenhouse gas (GHG) emissions associated with the Eastern Panhandle Project.¹ The volume of GHG emissions associated with the downstream use would result in about 1 percent increase in GHG emissions in West Virginia.² Going forward, at

¹ The Environmental Assessment (EA) estimated that if all 47,500 dekatherms per day (Dth/d) of natural gas (or 46.6 MMcf/day) were transported to combustion end uses, downstream end-use would result in the emissions of about 920,000 metric tons of CO_{2e} per year. Eastern Panhandle EA at 77.

² Because the project would deliver gas to the Mountaineer Eastern Panhandle Expansion Project in West Virginia, Commission staff compared the U.S. Energy Information Administration's West Virginia 2015 GHG emissions numbers to the full-burn GHG emissions calculation. Commission staff estimated a less than a 1 percent increase in GHG emissions in West Virginia and a 0.02 percent increase on the national level. <https://www.eia.gov/environment/emissions/state/> and https://www.epa.gov/sites/production/files/2017-02/documents/2017_complete_report.pdf.

One way the Commission could assess the significance of a given rate or volume of GHG emissions is to compare the downstream GHG emissions associated with an individual project to the total state, regional, and/or national emission inventories.

a minimum, I believe we should continue to conduct this GHG quantification and analysis as part of our environmental review of pipeline projects.³

In addition, I believe we could better account for changes in GHG emissions resulting from the combustion of the transported gas by calculating the Social Cost of Carbon which more accurately reflects the climate change impacts of a particular project.⁴ The order finds that there is no standard methodology to determine how a project's contribution to GHG emissions would translate into physical effects on the environment for purposes of evaluating the Project's impacts on climate change.⁵ But that is precisely the use for which the Social Cost of Carbon was developed—it is a scientifically-derived metric to translate tonnage of carbon dioxide or other GHGs to the cost of long-term climate harm.⁶ I believe the Social Cost of Carbon metric would more readily apply to a proposed pipeline project if we developed a fuller record to support a quantified cost-benefit approach to our pipeline reviews.⁷

As for the upstream impacts associated with the Eastern Panhandle Project, the Commission declines to include even the generic upstream information we have been

³ I recognize that this full-burn estimate is simply a mathematical derivative of pipeline volume, but I still want to disclose it and consider it as part of my public interest determination, particularly where there is not more precise evidence of downstream pipeline utilization. More information in the record regarding the identified end uses would enable the Commission to more accurately assess indirect impacts of downstream GHG emissions by calculating gross and net GHG emissions as part of our NEPA responsibilities. The record indicates that Mountaineer Gas is a local distribution company (LDC), so the gas will likely be burned for home heating or industrial uses.

⁴ *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233 (2018) (LaFleur, Comm'r, dissenting in part).

⁵ *Columbia Gas Transmission, L.L.C.*, 164 FERC ¶ 61,036 at P 58 (2018).

⁶ https://www.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf

⁷ I hope we discuss how the Commission could effectively use the Social Cost of Carbon, and more broadly, how the Commission should consider climate change impacts in our environmental reviews as part of the notice of inquiry on the Certificate Policy Statement. *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, 163 FERC ¶ 61,042 (2018).

disclosing since 2016, finding such information to be irrelevant.⁸ I do not support this decision. While it is less clear that upstream effects are caused by the pipeline, I would respond to upstream GHG comments by disclosing whatever data we have using the best available information, such as the DOE studies cited in past orders. However, today's order rejects that approach, and applies the Commission's new policy that limits the review and disclosure of upstream and downstream GHG impacts as part of our National Environmental Policy Act (NEPA) responsibilities and public interest determination under the Natural Gas Act (NGA).⁹ I continue to note my strong disagreement with this change in policy.

Finally, the order highlights another aspect of our environmental reviews that warrants further consideration. The non-jurisdictional Mountaineer Project, a 23-mile natural gas pipeline project to be located in West Virginia is being constructed concurrently with the Eastern Panhandle Project, and will interconnect with, and receive gas from, the Eastern Panhandle Project. Thus, facilities of both projects are integral to and interdependent upon each other. I believe that today's order rightly concluded that the Mountaineer Project is not a connected, cumulative, or similar action, as defined by NEPA regulations. However, in my view, it would be appropriate for the Commission to develop a more robust approach to evaluating the environmental impacts of proposed non-jurisdictional pipeline projects, when the project, such as the one here, is closely related and dependent upon the jurisdictional pipeline project. Under our current approach, our environmental review of non-jurisdictional projects relies largely on the

⁸ The Commission has relied on recent DOE studies to provide generic estimates of impacts associated with upstream natural gas production, including production related GHG emissions. Commission orders that contained this generic upstream information acknowledged the limitations of providing such data because we did not have more detailed information such as the number, location, and timing of the wells, roads, and gathering lines as well as details about production methods. Dep't of Energy and Nat'l Energy Tech. Laboratory, *Life Cycle Analysis of Natural Gas Extraction and Power Generation*, DOE/NETL-2015/1714 (Aug. 30, 2016) (2016 DOE/NETL Study); U.S. Energy Info. Admin., *The Growth of U.S. Natural Gas: An Uncertain Outlook for U.S. and World Supply* (June 15, 2015), <http://www.eia.gov/conference/2015/pdf/presentations/staub.pdf>; Dep't of Energy and Nat'l Energy Tech. Laboratory, *Environmental Impacts of Unconventional Natural Gas Development and Production*, DOE/NETL-2014/1651, (May 29, 2014) (2014 DOE/NETL Study).

⁹ See *Dominion Transmission Inc.*, 163 FERC ¶ 61,128 (2018) (LaFleur, Comm'r, dissenting in part) (*New Market*).

nature of information provided by the applicant. I believe, in cases such as this, we should request that pipeline applicants provide more specific environmental information about related non-jurisdictional projects.¹⁰ Here, Columbia provided limited details on the Mountaineer Project, therefore we were only able to disclose very limited information on the environmental impacts of the Mountaineer Project as part of our cumulative impacts analysis. I believe, where a non-jurisdictional pipeline project functions together with the jurisdictional one, we should seek more information in order to ensure a more comprehensive environmental review.

For all of these reasons, I concur.

Cheryl A. LaFleur
Commissioner

¹⁰ When pipeline applicants provide more information on related non-jurisdictional projects, the Commission has disclosed that information in our NEPA documents. *See Valley Crossing Pipeline, LLC*, 161 FERC ¶ 61,084 (2017) (The EA included detailed information, including environmental impacts, of the non-jurisdictional Valley Crossing System in a “Related Facilities” section.). *See also Trans-Pecos Pipeline, LLC*, 157 FERC ¶ 61,081 (2016) (The EA, in the cumulative impacts section, evaluated the non-jurisdictional Trans-Pecos Pipeline outside the region of influence of the jurisdictional Presidio Border Crossing Project utilizing the best available data provided by the pipeline applicant.).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Columbia Gas Transmission, L.L.C.

Docket No. CP17-80-000

(Issued July 19, 2018)

GLICK, Commissioner, *dissenting in part*:

In today's order, the Commission grants Columbia Gas Transmission's request for authorization to construct and operate the Eastern Panhandle Expansion Project (Project), concluding that the Project is required by the public convenience and necessity.¹ The Commission also finds that the Project will not have a significant effect on the environment.² Yet, in reaching these conclusions, the Commission maintains that it need not consider the harm from the Project's contribution to climate change. I believe that the Commission's refusal to do so falls well short of our obligations under the Natural Gas Act (NGA)³ and the National Environmental Policy Act (NEPA).⁴ While the Commission quantified the Project's downstream greenhouse gas (GHG) emissions, the Commission nonetheless determines that these emissions are not reasonably foreseeable and that it is not obligated to determine whether the resulting harm from climate change is significant.⁵ I dissent in part from today's order because I disagree with these conclusions and believe the Commission cannot find that the Project is in the public interest without first considering the significance of the Project's contribution to climate change.⁶

¹ *Columbia Gas Transmission, L.L.C.*, 164 FERC ¶ 61,036 (2018) (Certificate Order).

² Certificate Order, 164 FERC ¶ 61,036 at P 74.

³ 15 U.S.C. 717f (2012).

⁴ National Environmental Policy Act of 1969, Pub. L. No. 91–190, 83 Stat. 852.

⁵ Certificate Order, 164 FERC ¶ 61,036 at P 58.

⁶ Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f (2012). Furthermore, NEPA requires the Commission to take a "hard look" at the environmental impacts of its

The Commission, once again, goes out of its way to avoid seriously addressing the Project’s impact from climate change by disregarding the Project’s upstream and downstream GHG emissions.⁷ The Final Environmental Assessment (EA) for the Project includes a “full-burn” analysis that quantifies the potential downstream GHG emissions associated with combusting the amount of gas that the Project could transport.⁸ Nevertheless, the Commission refuses to recognize the harm from these emissions as an indirect effect of the Project. Furthermore, the Commission surmises that only where it has definitive information about the specific location and timing of upstream production can it conclude that GHG emissions from production activities are reasonably foreseeable.⁹ This definition of indirect effects is overly narrow and circular.¹⁰ NEPA does not permit agencies to so easily shirk their responsibilities to consider environmental consequences; instead, it requires that the Commission engage in reasonable forecasting and estimation where doing so would further the statute’s two-fold purpose of ensuring

decisions. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). While I cannot support today’s order because it fails to meet these standards, I agree with the Commission’s conclusion that Columbia Gas has adequately demonstrated a need for the Project.

⁷ Certificate Order, 164 FERC ¶ 61,036 at PP 44–47.

⁸ Final EA at 77 (emission quantity based on the full design capacity of the projects). This calculation was made prior to the policy change, announced in *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 38–42, 59–63 (2018) (*New Market*), to exclude downstream GHG emissions calculations in cases where the exact end use location for consumption is not known.

⁹ Certificate Order, 164 FERC ¶ 61,036 at PP 44–47.

¹⁰ *See San Juan Citizens All. et al. v. United States Bureau of Land Mgmt.*, No. 16-CV-376-MCA-JHR, 2018 WL 2994406, at *10 (D.N.M. June 14, 2018) (holding that it was arbitrary for the Bureau of Land Management to conclude “that consumption is not ‘an indirect effect of oil and gas production because production is not a proximate cause of GHG emissions resulting from consumption’” because “this statement is circular and worded as though it is a legal conclusion”). In adopting it, the Commission disregards the Project’s central purpose—to facilitate natural gas consumption by providing new supplies. *See* EA at 2 (describing the purpose and need for the Project as including “directly meet[ing] the market demand growth that [Mountaineer Gas’s] system continues to experience”, where Mountaineer Gas is the project shipper, subscribing to the entire pipeline capacity).

that the relevant agency will “have available, and will carefully consider, detailed information concerning significant environmental impacts” and that this information will also be “available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.”¹¹

As the D.C. Circuit explained in *Sierra Club v. FERC (Sabal Trail)*, in the face of indefinite variables, “agencies may sometimes need to make educated assumptions about an uncertain future.”¹² The Commission cannot point to the mere presence of uncertainty over upstream and downstream GHG emissions to excuse it from considering the harm from the Project’s contribution to climate change. In the case of new natural gas pipelines, it is reasonable to assume that building incremental transportation capacity will spur additional production and result in some level of combustion of natural gas, even if the exact details of the method or location are not definite. As the United States Court of Appeals for the Eighth Circuit explained in *Mid States*—a case that also involved the downstream emissions from new infrastructure for transporting fossil fuels—when the “nature of the effect” (end-use emissions) is reasonably foreseeable, but “its extent is not” (specific consumption activity producing emissions), an agency may not simply ignore the effect.¹³

¹¹ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)). In order to evaluate circumstances in which downstream impacts of a pipeline facility are reasonably foreseeable results of constructing and operating the proposed facility, I am relying on precisely the sort of “reasonably close causal relationship” that the Supreme Court has required in the NEPA context and analogized to proximate cause. *See id.* at 767 (“NEPA requires a ‘reasonably close causal relationship’ between the environmental effect and the alleged cause. The Court [has] analogized this requirement to the ‘familiar doctrine of proximate cause from tort law.’”) (quoting *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)); *see also Paroline v. United States*, 134 S. Ct. 1710, 1719 (2014) (“Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct.”); *Staelens v. Dobert*, 318 F.3d 77, 79 (1st Cir. 2003) (“[I]n addition to being the cause in fact of the injury [the but for cause], the plaintiff must show that the negligent conduct was a proximate or legal cause of the injury as well. To establish proximate cause, a plaintiff must show that his or her injuries were within the reasonably foreseeable risks of harm created by the defendant’s negligent conduct.”) (internal quotation marks and citations omitted).

¹² 867 F.3d 1357, 1374 (D.C. Cir. 2017).

¹³ *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003).

Based on the record here, it is entirely foreseeable that natural gas transported through the Project will be combusted, emitting GHGs that contribute to climate change. As noted above, the Project’s stated purpose is to assist Mountaineer Gas, a local distribution company subscribing to the Project’s full capacity, “in meeting the current and future needs of residents and businesses.”¹⁴ Even where exact information regarding the source of the gas to be transported and the ultimate end use is unknown, the Commission will often be able to produce comparably useful information based on reasonable forecasts of the GHG emissions.¹⁵ This is the case here, where the Commission did estimate and disclose the potential GHG emissions resulting from downstream consumption, utilizing information provided in the record and publicly available analytical tools.¹⁶ Under these circumstances, the Commission must consider the impact from climate change resulting from this likely end use.¹⁷

Quantifying the GHG emissions that result from the project is a necessary, but not sufficient, step in meeting the Commission’s obligations to consider the Project’s environmental effects associated with climate change. NEPA and the NGA’s public interest standard require the Commission to consider not just the GHG emissions caused by a new pipeline but the resulting harm. The majority claims that it lacks the means to do this.¹⁸

¹⁴ See *supra* note 10 (EA at 2).

¹⁵ In comments recently submitted in the Commission’s pending review of the natural gas certification process, the current Administration’s Environmental Protection Agency recommended a number of tools the Commission can use to quantify the reasonably foreseeable “upstream and downstream GHG emissions associated with a proposed natural gas pipeline.” These include “economic modeling tools” that can aid in determining the “reasonably foreseeable energy market impacts of a proposed project.” United States Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 3–4 (filed June 21, 2018) (explaining that the “EPA has emission factors and methods” available to estimate GHG emissions—from activities upstream and downstream of a proposed natural gas pipeline—through the U.S. Greenhouse Gas Inventory and the Greenhouse Gas Reporting Program); see *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, 163 FERC ¶ 61,042 (2018).

¹⁶ EA at 77; Certificate Order, 164 FERC ¶ 61,036 at P 57.

¹⁷ *Sabal Trail*, 867 F.3d at 1371–72; *id.* at 1374.

¹⁸ Certificate Order, 164 FERC ¶ 61,036 at PP 58–60.

The Commission is incorrect insofar as it concludes that there is no “standard methodology . . . to determine how a project’s contribution to [GHG] emissions would translate into physical effects on the environmental for the purposes of evaluating the project’s impacts on climate change.”¹⁹ That is precisely what the Social Cost of Carbon provides. It translates the long-term damage done by a ton of carbon dioxide into a monetary value, thereby providing a meaningful and informative approach for satisfying an agency’s obligation to consider how its actions contribute to the harm caused by climate change.

The Commission also claims that it cannot determine whether the Project’s contributions to the harm caused by climate change is significant because there is no standard established “to ascribe significance to a given rate or volume of GHG emissions.”²⁰ In other words, even if it quantified the harm caused by the Projects using the Social Cost of Carbon, the majority believes this task would be meaningless because it is not aware of an established framework or threshold for determining the significance of that impact.

But the Commission itself recognizes that a variety of environmental impacts are best considered qualitatively and provides no answer for why the Commission—as the agency with both the mandate and technical expertise to consider the public interest in the Projects—cannot use a quantitative measure as input to making a qualitative determination regarding the significance of the Projects’ contribution to climate change. As the Commission notes when discussing Project alternatives, the CEQ regulations already outline a framework for determining whether a project’s impacts on the environment will be considered significant.²¹ Furthermore, the Environmental Protection Agency recommended this approach in its comments on the Commission’s pending review of the natural gas certification process, explaining that estimates of the Social Cost of Carbon “may be used for project analysis when [the Commission] determines that a monetary assessment of the impacts associated with the estimated net change in GHG emissions provides useful information in its environmental review or public interest

¹⁹ *Id.* P 58; *see also id.* PP 59–60.

²⁰ *Id.* P 59.

²¹ *Id.* PP 71–72 (citing 40 C.F.R. § 1508.27 (2017), which sets forth a list of factors agencies should rely on when determining whether a project’s environmental impacts are “significant” considering both “context” and “intensity.”).

determination.”²²

* * *

Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens. Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane—which can be released in large quantities through the production and the consumption of natural gas. Congress determined under the NGA that no entity may transport natural gas interstate, or construct or expand interstate natural gas facilities, without the Commission first determining the activity is in the public interest. This requires the Commission to find, on balance, that a project’s benefits outweigh the harms, including the environmental impacts from climate change that result from authorizing additional transportation. Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document and consider how its authorization of a natural gas pipeline facility will lead to the emission of GHGs, contributing to climate change.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

²² United States Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 4–5 (filed June 21, 2018).

EXHIBIT B

COLUMBIA TRACT NO. 1 (MD-WA-27.00)

1. Fee Owner(s) / Surface Owner(s):

State of Maryland, Department of Natural Resources
c/o Land & Prop MGMT E-3
Tawes State Office Bldg.
580 Taylor Ave.
Annapolis, MD 21401-2352

2. Other Parties in Interest:

None.

3. Legal Description:

Vesting Deed Legal Description:

All that certain land situate in Washington County, Maryland, BEGINNING at Grantor's Valuation Station 5380+89, at or near Big Pool, being 400 ft., more or less, west (as measured along Grantor's former centerline of track) of the northerly extension of the westerly line of lands acquired by Grantor (or its predecessor) from Hagerstown Cooperage Company by deed dated March 14, 1912, recorded in Deed Book EO 138, Page 476, such BEGINNING POINT being indicated on fragment print of Grantor's Valuation Map 3-1, sheet 51, marked Exhibit C-1, and extending generally in an westerly direction through Washington County a distance of 20.34 miles, more or less, to Grantor's Valuation Station 6455+20, at or near Tonoloway, being the easterly line of Tract 93-101, as conveyed to the United States of America by deed dated December 2, 1980, recorded in Washington County in Liber 712, Page 479, such ENDING POINT being indicated on fragment print of Grantor's Valuation Map 3-1, sheet 62, marked Exhibit C-2; All as shown in detail on Grantor's Valuation Maps 3-1, sheets 51 through 62, inclusive, incorporated herein by reference.

4. County Tax / Parcel ID No(s):

05026814

5. Easement Interests:

Columbia seeks to acquire the rights-of-way and easements as generally depicted on Attachment B-1-A, attached hereto and incorporated by reference herein, through Tract No. 1, which include, without limitation, the following:

(a) **Permanent Easement:**

A perpetual easement and right-of-way for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, changing the size of, upgrading, reconstructing, and removing or abandoning in place one pipeline for the transportation of natural gas and any of its constituents and byproducts, together with the right to construct, maintain, inspect, operate, replace, relay and/or remove all roadways, fittings, cathodic protection equipment, pipeline markers, and all other below ground equipment and appurtenances thereto (collectively, the "**Facilities**") on, under, across and/or through a strip of land depicted on Attachment B-1-A as the "Proposed Permanent Easement" (the "**Permanent Easement**"); together with all privileges necessary or convenient for the full use of the rights herein granted.

Upon completion of the initial construction of the pipeline, including any necessary restoration or reclamation activities associated therewith, Defendant, subject to their compliance with Columbia's requirements pertaining to the safe operation and maintenance of its Facilities, may fully use and enjoy the Permanent Easement to the extent that such use and enjoyment does not interfere with Columbia's rights granted herein or create an actual or potential hazard to Columbia's Facilities or the exercise of its rights hereunder; provided, however, Defendant shall not place or permit to be placed any temporary or permanent structure or obstruction of any kind in, on or under the Permanent Easement, unless specifically approved in writing by Columbia, shall not excavate or otherwise alter the ground elevation, and shall comply with Columbia's then-current Minimum Guidelines for Construction Near Pipeline Facilities and Right-of-Way Use Specifications.

EXHIBIT "B"

Attachment B-1-A

LEGEND

BLK.	BLOCK
BK	BOOK
PG	PAGE
VOL	VOLUME
FND.	FOUND
PROP.	PROPOSED
T	TOWNSHIP
R	RANGE
SEC.	SECTION
N.T.S.	NOT TO SCALE
—PL—	PROPERTY LINE
—\$—	SECTION LINE
R/W	RIGHT OF WAY
L.R.W.C.M.	LAND RECORDS OF WASHINGTON CO., MARYLAND
ET AL	AND OTHERS
ET UX	AND WIFE

WASHINGTON COUNTY, MARYLAND

0' 25' 50'
SCALE: 1"=50'

TRACT NO. MD-WA-25.00

VINCENT E. GAVIN
FIFTH ELECTION DISTRICT
DJW 1600, PG. 0811
L.R.W.C.M.

TAX PARCEL # 05-004578

POINT OF TERMINATION

SURVEY LINE
N38°15'17"W-104.5'

S89° 08' 12"E-127.0'

FND. 1-1/2" IRON PIPE
UN-MARKED

TRACT NO. MD-WA-27.00

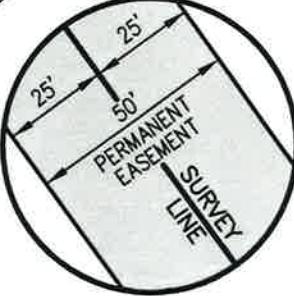
STATE OF MARYLAND NATURAL RESOURCES
FIFTH ELECTION DISTRICT
DESCRIBED IN EXHIBIT "C"
DJW 965, PG 0409
L.R.W.C.M.
TAX PARCEL # 05026814

TRACT NO. MD-WA-29.00

RODNEY JAY LONG AND
FARRAH MAE LONG
FIFTH ELECTION DISTRICT
DESCRIBED AS PARCEL NO. 1
DJW 3340, PG. 0217
L.R.W.C.M.
TAX PARCEL # 05-012406

POINT OF BEGINNING

POINT OF COMMENCING

FND. 5/8" REBAR
(UN-MARKED)

**PERMANENT EASEMENT
DETAIL**
N.T.S.

**STATE OF MARYLAND NATURAL RESOURCES**

TOTAL DISTANCE ACROSS PROPERTY: 104.5'
TOTAL RODS ACROSS PROPERTY: 6.33 RODS
AREA OF PERMANENT EASEMENT: 0.12 ACRES

NOTES:

1. THIS SURVEY BASED ON LIMITED TITLE CERTIFICATE (L.T.C.) PREPARED FOR TRACT NO. 0031-0016-0053, DATED 07/12/2016 PROVIDED BY PERCHERON FIELD SERVICES. NO ADDITIONAL RESEARCH PROVIDED BY THE UNDERSIGNED PROFESSIONAL LAND SURVEYOR.
2. ALL BEARINGS AND DISTANCES CONTAINED HEREIN ARE GRID BASED ON THE MARYLAND COORDINATE SYSTEM OF 1983, NORTH AMERICAN DATUM (NAD) OF 1983, U.S. SURVEY FEET AS DERIVED FROM A GLOBAL POSITIONING SYSTEM (GPS) SURVEY.
3. FOR REFERENCE AND FURTHER INFORMATION SEE EXHIBIT "A" OF THIS DOCUMENT, PREPARED BY ENSITEUSA, OF SAME DATE.

IF THIS EASEMENT SURVEY AND ACCOMPANYING DESCRIPTION ARE NOT SEALED WITH THE RAISED EMBOSSED SEAL OF THE REGISTERED PROFESSIONAL LAND SURVEYOR WHOSE SIGNATURE APPEARS BELOW, IT SHOULD BE CONSIDERED AS A COPY AND NOT THE ORIGINAL.

I, JAMES EDWARD GRANT, DO HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND, THAT THIS RECORD OF SURVEY CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THE SURVEY.

JAMES EDWARD GRANT
REGISTERED PROFESSIONAL LAND SURVEYOR
MARYLAND REGISTRATION NO. 21771
ENSITE USA, 3100 S. GESSNER, SUITE 400 HOUSTON, TEXAS 77063 TEL: (832) 803-1041

DATE
4/19/2017**EnSite USA**

3100 S. GESSNER
SUITE 400
HOUSTON, TX. 77063
(713) 456-7880
www.ensiteusa.com

Columbia Gas Transmission

DRAWN CGS	DATE	04/06/2017
CHK'D IB	DATE	04/06/2017
APP'D DMB	DATE	04/06/2017
SCALE 1"=50'	JOB NO.	MD-WA-27.00

EASEMENT SURVEY

PERMANENT EASEMENT SURVEY
UPON THE PROPERTY OF
STATE OF MARYLAND
NATURAL RESOURCES

WASHINGTON COUNTY, MARYLAND

SHEET 1 OF 1 DWG NO. MD-WA-27.00 REV 0



CPG-EASTERN PANHANDLE EXPANSION PROJECT
ENSITE USA PROJECT 6493.000
TRACT: MD-WA-27.00
STATE OF MARYLAND NATURAL RESOURCES
WASHINGTON COUNTY, MARYLAND

DESCRIPTION OF A FIFTY (50) FOOT WIDE
PERMANENT EASEMENT AND RIGHT OF WAY
UPON THE PROPERTY OF
STATE OF MARYLAND NATURAL RESOURCES

DESCRIPTION OF A FIFTY (50) FOOT WIDE PERMANENT EASEMENT AND RIGHT OF WAY SITUATED IN THE FIFTH ELECTION DISTRICT, WASHINGTON COUNTY, MARYLAND AND BEING UPON, OVER, THROUGH AND ACROSS A 100 FOOT WIDE, 20.34 MILE LONG STRIP OF LAND IN THE NAME OF THE STATE OF MARYLAND NATURAL RESOURCES DESCRIBED IN EXHIBIT "C" OF A DEED FROM CSX TRANSPORTATION, INC. TO STATE OF MARYLAND NATURAL RESOURCES RECORDED IN WASHINGTON COUNTY CIRCUIT COURT LAND RECORDS, DJW 965, PAGE 0409, MSA_CE18_915, REFERRED TO HEREIN AFTER AS "THE ABOVE REFERENCED TRACT OF LAND", SAID FIFTY (50) FOOT WIDE PERMANENT EASEMENT AND RIGHT OF WAY BEING SITUATED TWENTY FIVE (25) FEET ON EACH SIDE OF THE HEREIN DESCRIBED SURVEY LINE. THE SIDELINES OF SAID PERMANENT EASEMENT AND RIGHT OF WAY BEING LENGTHENED OR SHORTENED TO INTERSECT THE BOUNDARIES OF THE ABOVE REFERENCED TRACT OF LAND, SAID SURVEY LINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; WITH ALL BEARINGS AND DISTANCES HEREIN BEING GRID, BASED UPON THE MARYLAND STATE PLANE COORDINATE SYSTEM OF 1983, NORTH AMERICAN DATUM OF 1983, U.S. SURVEY FEET, AS DERIVED FROM A GLOBAL POSITIONING SYSTEM (GPS) SURVEY.

PERMANENT EASEMENT (P.E.R.W.)

COMMENCING at an un-marked five-eighths (5/8) inch rebar, found for the Southernmost Corner of property in the name of Rodney Jay Long and Farrah Mae Long, described as Parcel Number 1 as recorded in Washington County Circuit Court Land Records, DJW 3340, page 0217, also identified as Tax Parcel # 05-012406;

THENCE North 12°13'14" West, a distance of 166.6 feet to a point on the Southeasterly line of the above referenced tract of land, same being the Northwesterly line of said Rodney Jay Long and Farrah Mae Long property, said point being the **POINT OF BEGINNING** of the herein described survey line;

THENCE across a portion of the above referenced tract of land, the following bearing and distance:

North 38°15'17" West, a distance of 104.5 feet;

to a point on the South line of property in the name of Vincent E. Gavin, as described Washington County Circuit Court Land Records, DJW 1600, page 0811, also identified as Tax Parcel # 05-004578, same being the Northwesterly line of the above referenced tract of land, and being the **POINT OF TERMINATION** of the herein described survey line, from which an un-marked one and one-half (1-1/2) inch iron pipe, found on the Southeasterly line of the above referenced tract of land, same being the most Northerly Corner of said Rodney Jay Long and Farrah Mae Long property bears South 89°08'12" East, a distance of 127.0 feet, said survey line having a total length of 104.5 feet or 6.33 rods, said Permanent Easement and Right of Way containing 0.12 acres of land, more or less.

EXHIBIT "A"

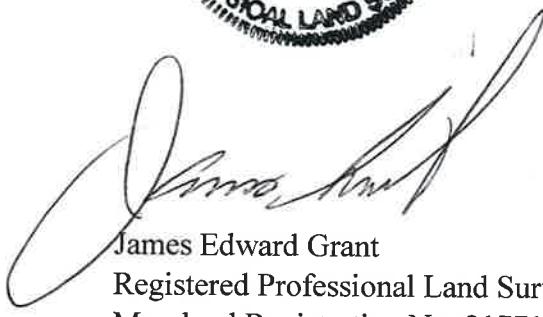


CPG-EASTERN PANHANDLE EXPANSION PROJECT
ENSITE USA PROJECT 6493.000
TRACT: MD-WA-27.00
STATE OF MARYLAND NATURAL RESOURCES
WASHINGTON COUNTY, MARYLAND

This description based on a Limited Title Certificate (L.T.C.) prepared for tract MD-WA-27.00, dated 07/12/2016, provided by Percheron Field Services, no additional research provided by the undersigned professional land surveyor.

If this description and accompanying drawing are not sealed with the raised embossing seal of the undersigned professional land surveyor, it should be considered a copy and not the original.

For reference and further information see EXHIBIT "B" of this document, prepared by EnSite USA, of same date.



A handwritten signature in black ink, appearing to read "James Edward Grant".

James Edward Grant
Registered Professional Land Surveyor
Maryland Registration No. 21771



A handwritten date in black ink, reading "4/19/2017".

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

COLUMBIA GAS TRANSMISSION, LLC,)
)
Plaintiff,)
)
v.) Civil Action No.:
)
)
0.12 ACRES OF LAND, MORE OR)
LESS, IN WASHINGTON COUNTY,)
MARYLAND; STATE OF MARYLAND,)
DEPARTMENT OF NATURAL RESOURCES,)
)
Defendants.)

RULE 71.1 NOTICE OF CONDEMNATION

**TO THE SURFACE OWNER DEFENDANT THAT HAS OR MAY CLAIM TO HAVE AN
INTEREST IN COMPLAINT TRACT NO. 1 (MD-WA-27.00), COUNTY TAX / PARCEL
ID NO.: 05026814, AS FURTHER IDENTIFIED AND DESCRIBED BELOW:**

NAMES AND ADDRESSES OF OWNER(S):

State of Maryland, Department of Natural Resources
c/o Land & Prop MGMT E-3
Tawes State Office Bldg.
580 Taylor Ave.
Annapolis, MD 21401-2352

NAMES AND ADDRESSES OF OTHER PARTIES IN INTEREST:

None.

YOU ARE HEREBY NOTIFIED THAT, pursuant to Rule 71.1 of the Federal Rules of Civil Procedure and other applicable laws of the United States, a Complaint in Condemnation (“Complaint”), styled *Columbia Gas Transmission, LLC v. 0.12 Acres of Land, More or Less, in Washington County, Maryland; State of Maryland, Department of Natural Resources*, which, along with all Exhibits thereto, is fully incorporated herein by reference, has been filed by Plaintiff Columbia Gas Transmission, LLC (“Columbia”), in the United States District Court for the District of Maryland.

DESCRIPTION OF THE INTERESTS TO BE TAKEN AND USES FOR WHICH THE PROPERTY IS TO BE TAKEN

The above-captioned matter is a condemnation action by Columbia, pursuant to the Natural Gas Act and the Certificate of Public Convenience and Necessity issued by the Federal Energy Commission (“FERC”), for the taking of rights-of-way (a permanent easement) across the tract of real property at issue in the case and fully identified and described in **Exhibit B**, attached hereto and incorporated herein by reference, for the purpose of constructing, placing, operating, testing, altering, maintaining, protecting, and/or replacing a new natural gas pipeline together with connections, fittings, cathodic protection equipment, pipeline markers, and all other below ground equipment, appurtenances and appurtenant facilities thereto upon, under, or across a strip of land of variable width. The easement affecting property in which you own or may own an interest and property to be encumbered are more particularly described on Exhibit B.

AUTHORITY FOR THE TAKING

The authority for this taking is a law of the United States found at 15 U.S.C. § 717 *et. seq.*, commonly known as the Natural Gas Act, which, at section 717f(h) authorizes the taking of property to construct, operate, and maintain a natural gas pipeline after having received a certificate of public convenience and necessity from FERC. Columbia obtained such a certificate from FERC on July 19, 2018. Among other relief, Columbia has requested in its Complaint, its Motion for an Order of Condemnation and for Preliminary Injunction, and its Memorandum in Support, immediate access to and use of the property to be condemned upon, among other things, the Court’s determination that Columbia has the power of eminent domain and has properly exercised that power herein.

SERVING AN ANSWER OR NOTICE

Pursuant to Rule 71.1(e) of the Federal Rules of Civil Procedure, if you have any objection or defense to the taking of the property in which you may have or claim some interest, you must serve your answer upon Columbia's undersigned attorneys, c/o Alan M. Rifkin, Rifkin Weiner Livingston, LLC, 225 Duke of Gloucester Street, Annapolis, Maryland 21401, within **twenty-one (21)** days after service of this notice upon you, exclusive of the date of service. If you choose to serve an answer, it must:

Identify the property or properties in which you claim an interest;

State the nature and extent of the interest(s) you claim; and

State all of your objections and defenses to the taking.

THE FAILURE TO SERVE AN ANSWER AS SET FORTH ABOVE SHALL CONSTITUTE CONSENT TO THE TAKING AND TO THE COURT'S AUTHORITY TO PROCEED WITH THE ACTION AND TO FIX JUST COMPENSATION, AS WELL AS A WAIVER OF ALL DEFENSES AND OBJECTIONS NOT SO PRESENTED.

If you have no objection or defense to the taking, you may serve upon Columbia's attorney a notice of appearance designating the property or properties in which you claim an interest, and thereafter you shall receive notice of all proceedings affecting your interest(s).

At the hearing or trial on the issue of just compensation, whether or not you have answered or served a notice of appearance, you may present evidence regarding the amount of compensation to be paid for the property in which you have any interest, and you may, if so ordered, share in the distribution of the compensation awarded.

Dated: May 16, 2019

Respectfully submitted,

By:

/s/
Alan M. Rifkin (MD Bar No. 11562)
Barry L. Gogel (MD Bar No. 25495)
Rifkin Weiner Livingston, LLC
225 Duke of Gloucester Street
Annapolis, Maryland 21401
T: 410.269.5066
F: 410.269.1235
arifkin@rwllaw.com
bgogel@rwllaw.com

John Haug (to be admitted pro hac vice)
David Fedder (to be admitted pro hac vice)
Michael Harriss (to be admitted pro hac vice)
Dentons US LLP
211 N. Broadway Suite 3000
St. Louis, MO 63102
T: 314.259.1800
F: 314.259.5959
john.haug@dentons.com
david.fedder@dentons.com
michael.harriss@dentons.com

*Attorneys for Plaintiff Columbia Gas Transmission,
LLC*

EXHIBIT B

COLUMBIA TRACT NO. 1 (MD-WA-27.00)

1. Fee Owner(s) / Surface Owner(s):

State of Maryland, Department of Natural Resources
c/o Land & Prop MGMT E-3
Tawes State Office Bldg.
580 Taylor Ave.
Annapolis, MD 21401-2352

2. Other Parties in Interest:

None.

3. Legal Description:

Vesting Deed Legal Description:

All that certain land situate in Washington County, Maryland, BEGINNING at Grantor's Valuation Station 5380+89, at or near Big Pool, being 400 ft., more or less, west (as measured along Grantor's former centerline of track) of the northerly extension of the westerly line of lands acquired by Grantor (or its predecessor) from Hagerstown Cooperage Company by deed dated March 14, 1912, recorded in Deed Book EO 138, Page 476, such BEGINNING POINT being indicated on fragment print of Grantor's Valuation Map 3-1, sheet 51, marked Exhibit C-1, and extending generally in an westerly direction through Washington County a distance of 20.34 miles, more or less, to Grantor's Valuation Station 6455+20, at or near Tonoloway, being the easterly line of Tract 93-101, as conveyed to the United States of America by deed dated December 2, 1980, recorded in Washington County in Liber 712, Page 479, such ENDING POINT being indicated on fragment print of Grantor's Valuation Map 3-1, sheet 62, marked Exhibit C-2; All as shown in detail on Grantor's Valuation Maps 3-1, sheets 51 through 62, inclusive, incorporated herein by reference.

4. County Tax / Parcel ID No(s):

05026814

5. Easement Interests:

Columbia seeks to acquire the rights-of-way and easements as generally depicted on Attachment B-1-A, attached hereto and incorporated by reference herein, through Tract No. 1, which include, without limitation, the following:

(a) **Permanent Easement:**

A perpetual easement and right-of-way for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, changing the size of, upgrading, reconstructing, and removing or abandoning in place one pipeline for the transportation of natural gas and any of its constituents and byproducts, together with the right to construct, maintain, inspect, operate, replace, relay and/or remove all roadways, fittings, cathodic protection equipment, pipeline markers, and all other below ground equipment and appurtenances thereto (collectively, the "**Facilities**") on, under, across and/or through a strip of land depicted on Attachment B-1-A as the "Proposed Permanent Easement" (the "**Permanent Easement**"); together with all privileges necessary or convenient for the full use of the rights herein granted.

Upon completion of the initial construction of the pipeline, including any necessary restoration or reclamation activities associated therewith, Defendant, subject to their compliance with Columbia's requirements pertaining to the safe operation and maintenance of its Facilities, may fully use and enjoy the Permanent Easement to the extent that such use and enjoyment does not interfere with Columbia's rights granted herein or create an actual or potential hazard to Columbia's Facilities or the exercise of its rights hereunder; provided, however, Defendant shall not place or permit to be placed any temporary or permanent structure or obstruction of any kind in, on or under the Permanent Easement, unless specifically approved in writing by Columbia, shall not excavate or otherwise alter the ground elevation, and shall comply with Columbia's then-current Minimum Guidelines for Construction Near Pipeline Facilities and Right-of-Way Use Specifications.

EXHIBIT "B"**LEGEND**

BLK. BLOCK
 BK BOOK
 PG PAGE
 VOL VOLUME
 FND. FOUND
 PROP. PROPOSED
 T TOWNSHIP
 R RANGE
 SEC. SECTION
 N.T.S. NOT TO SCALE
 —PL— PROPERTY LINE
 —\$— SECTION LINE
 R/W RIGHT OF WAY
 L.R.W.C.M. LAND RECORDS OF WASHINGTON CO., MARYLAND
 ET AL AND OTHERS
 ET UX AND WIFE

WASHINGTON COUNTY, MARYLAND

0' 25' 50'
SCALE: 1"=50'

TRACT NO. MD-WA-25.00

VINCENT E. GAVIN
FIFTH ELECTION DISTRICT
DJW 1600, PG. 0811
L.R.W.C.M.

TAX PARCEL # 05-004578

POINT OF TERMINATION

S89° 08' 12"E-127.0'

FND. 1-1/2" IRON PIPE
UN-MARKED

TRACT NO. MD-WA-27.00

STATE OF MARYLAND NATURAL RESOURCES
FIFTH ELECTION DISTRICT
DESCRIBED IN EXHIBIT "C"
DJW 965, PG 0409
L.R.W.C.M.
TAX PARCEL # 05026814

SURVEY LINE
N38° 15' 17"W-104.5'

POINT OF BEGINNING

TRACT NO. MD-WA-29.00

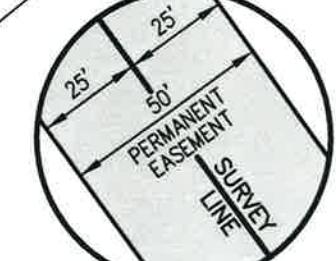
RODNEY JAY LONG AND
FARRAH MAE LONG
FIFTH ELECTION DISTRICT
DESCRIBED AS PARCEL NO. 1
DJW 3340, PG. 0217
L.R.W.C.M.
TAX PARCEL # 05-012406

R/W
R/W

BERM ROAD

N
12' 13' 14' 15' 16' 17' 18'

POINT OF COMMENCING
FND. 5/8" REBAR
(UN-MARKED)



**PERMANENT EASEMENT
DETAIL**
N.T.S.

NOTES:

1. THIS SURVEY BASED ON LIMITED TITLE CERTIFICATE (L.T.C.) PREPARED FOR TRACT NO. 0031-0016-0053, DATED 07/12/2016 PROVIDED BY PERCHERON FIELD SERVICES. NO ADDITIONAL RESEARCH PROVIDED BY THE UNDERSIGNED PROFESSIONAL LAND SURVEYOR.
2. ALL BEARINGS AND DISTANCES CONTAINED HEREIN ARE GRID BASED ON THE MARYLAND COORDINATE SYSTEM OF 1983, NORTH AMERICAN DATUM (NAD) OF 1983, U.S. SURVEY FEET AS DERIVED FROM A GLOBAL POSITIONING SYSTEM (GPS) SURVEY.
3. FOR REFERENCE AND FURTHER INFORMATION SEE EXHIBIT "A" OF THIS DOCUMENT, PREPARED BY ENSITEUSA, OF SAME DATE.

IF THIS EASEMENT SURVEY AND ACCOMPANYING DESCRIPTION ARE NOT SEALED WITH THE RAISED EMBOSSED SEAL OF THE REGISTERED PROFESSIONAL LAND SURVEYOR WHOSE SIGNATURE APPEARS BELOW, IT SHOULD BE CONSIDERED AS A COPY AND NOT THE ORIGINAL.

I, JAMES EDWARD GRANT, DO HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND, THAT THIS RECORD OF SURVEY CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THE SURVEY.

JAMES EDWARD GRANT
REGISTERED PROFESSIONAL LAND SURVEYOR
MARYLAND REGISTRATION NO. 21771
ENSITE USA, 3100 S. GESSNER, SUITE 400 HOUSTON, TEXAS 77063 TEL: (832) 803-1041

EnSite USA

3100 S. GESSNER
SUITE 400
HOUSTON, TX. 77063
(713) 456-7880
www.ensiteusa.com

Columbia
Gas Transmission

DRAWN CGS	DATE	04/06/2017
CHK'D IB	DATE	04/06/2017
APP'D DMB	DATE	04/06/2017
SCALE 1"=50'	JOB NO.	MD-WA-27.00

EASEMENT SURVEY

PERMANENT EASEMENT SURVEY
UPON THE PROPERTY OF
STATE OF MARYLAND
NATURAL RESOURCES

WASHINGTON COUNTY, MARYLAND

SHEET 1 OF 1 DWG NO. MD-WA-27.00 REV 0



CPG-EASTERN PANHANDLE EXPANSION PROJECT
ENSITE USA PROJECT 6493.000
TRACT: MD-WA-27.00
STATE OF MARYLAND NATURAL RESOURCES
WASHINGTON COUNTY, MARYLAND

DESCRIPTION OF A FIFTY (50) FOOT WIDE
PERMANENT EASEMENT AND RIGHT OF WAY
UPON THE PROPERTY OF
STATE OF MARYLAND NATURAL RESOURCES

DESCRIPTION OF A FIFTY (50) FOOT WIDE PERMANENT EASEMENT AND RIGHT OF WAY SITUATED IN THE FIFTH ELECTION DISTRICT, WASHINGTON COUNTY, MARYLAND AND BEING UPON, OVER, THROUGH AND ACROSS A 100 FOOT WIDE, 20.34 MILE LONG STRIP OF LAND IN THE NAME OF THE STATE OF MARYLAND NATURAL RESOURCES DESCRIBED IN EXHIBIT "C" OF A DEED FROM CSX TRANSPORTATION, INC. TO STATE OF MARYLAND NATURAL RESOURCES RECORDED IN WASHINGTON COUNTY CIRCUIT COURT LAND RECORDS, DJW 965, PAGE 0409, MSA_CE18_915, REFERRED TO HEREIN AFTER AS "THE ABOVE REFERENCED TRACT OF LAND", SAID FIFTY (50) FOOT WIDE PERMANENT EASEMENT AND RIGHT OF WAY BEING SITUATED TWENTY FIVE (25) FEET ON EACH SIDE OF THE HEREIN DESCRIBED SURVEY LINE. THE SIDELINES OF SAID PERMANENT EASEMENT AND RIGHT OF WAY BEING LENGTHENED OR SHORTENED TO INTERSECT THE BOUNDARIES OF THE ABOVE REFERENCED TRACT OF LAND, SAID SURVEY LINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; WITH ALL BEARINGS AND DISTANCES HEREIN BEING GRID, BASED UPON THE MARYLAND STATE PLANE COORDINATE SYSTEM OF 1983, NORTH AMERICAN DATUM OF 1983, U.S. SURVEY FEET, AS DERIVED FROM A GLOBAL POSITIONING SYSTEM (GPS) SURVEY.

PERMANENT EASEMENT (P.E.R.W.)

COMMENCING at an un-marked five-eighths (5/8) inch rebar, found for the Southernmost Corner of property in the name of Rodney Jay Long and Farrah Mae Long, described as Parcel Number 1 as recorded in Washington County Circuit Court Land Records, DJW 3340, page 0217, also identified as Tax Parcel # 05-012406;

THENCE North 12°13'14" West, a distance of 166.6 feet to a point on the Southeasterly line of the above referenced tract of land, same being the Northwesterly line of said Rodney Jay Long and Farrah Mae Long property, said point being the **POINT OF BEGINNING** of the herein described survey line;

THENCE across a portion of the above referenced tract of land, the following bearing and distance:

North 38°15'17" West, a distance of 104.5 feet;

to a point on the South line of property in the name of Vincent E. Gavin, as described Washington County Circuit Court Land Records, DJW 1600, page 0811, also identified as Tax Parcel # 05-004578, same being the Northwesterly line of the above referenced tract of land, and being the **POINT OF TERMINATION** of the herein described survey line, from which an un-marked one and one-half (1-1/2) inch iron pipe, found on the Southeasterly line of the above referenced tract of land, same being the most Northerly Corner of said Rodney Jay Long and Farrah Mae Long property bears South 89°08'12" East, a distance of 127.0 feet, said survey line having a total length of 104.5 feet or 6.33 rods, said Permanent Easement and Right of Way containing 0.12 acres of land, more or less.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

COLUMBIA GAS TRANSMISSION, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.:
)	
0.12 ACRES OF LAND, MORE OR)	
LESS, IN WASHINGTON COUNTY,)	
MARYLAND; STATE OF MARYLAND,)	
DEPARTMENT OF NATURAL RESOURCES,)	
)	
Defendants.)	

**PLAINTIFF'S MOTION FOR AN ORDER OF CONDEMNATION AND
FOR PRELIMINARY INJUNCTION**

Plaintiff, Columbia Gas Transmission, LLC (“**Columbia**”), moves this Court, pursuant to Rules 71.1 and 65 of the Federal Rules of Civil Procedure and 15 U.S.C. § 717, *et. seq.*, for an order authorizing it to condemn the property interests described in its Complaint in Condemnation (the “**Easement**”) and a preliminary injunction granting it immediate access to and use of the Easement. In support of this Motion, Columbia relies upon the pleadings filed in this action, the Declaration of Jacob Haney, P.E. (“**Haney Decl.**”), which is attached hereto as **Exhibit 1**, and incorporated by reference herein, and its Memorandum in Support, which is filed contemporaneously herewith and incorporated by reference herein.

The Federal Energy Regulatory Commission (“**FERC**”) granted Columbia a Certificate of Public Convenience and Public Necessity for the project at issue on July 19, 2018, in FERC Docket No. CP17-80-000 (the “**FERC Certificate**”). The FERC Certificate approves the construction and operation of approximately 3.37 miles of 8-inch diameter natural gas pipeline (the “**Project**”). The subject pipeline will commence at interconnections with Columbia’s Line 1804 and Line 10240 in Fulton County, Pennsylvania and extend through Washington County, Maryland, to a point of

delivery with the local distribution system of Mountaineer Gas Company, the project shipper, in Morgan County, West Virginia. The primary purpose of this Project is to provide up to 47,500 dekatherms per day (Dth/d) of incremental firm transportation service to serve markets in West Virginia, in addition to serving multiple communities by increasing supply options and enabling the safe and reliable transport of natural gas, and the Easement will be used to that end.

The FERC Certificate grants Columbia the power of eminent domain pursuant to 15 U.S.C. § 717f(h). Indeed, as a matter of law, Columbia is authorized to condemn the Easement, which is necessary to the operation of Columbia's Project. Columbia has attempted to negotiate the voluntary acquisition of the Easement, which efforts are described in detail in Columbia's Memorandum in Support, to no avail; accordingly, Columbia has been unable to acquire the Easement by contract. (Haney Decl., Ex. 1 at ¶¶ 13-22). Columbia has also complied with the requirements of Federal Rule of Civil Procedure 71.1.

Upon the Court's affirmation that Columbia has established its substantive right to condemn the Easement, Columbia should be granted immediate access to and use of the Easement by way of a preliminary injunction. *See, e.g., E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 828 (4th Cir. 2004); *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 215 (4th Cir. 2019); *Columbia Gas Transmission, LLC v. 252.071 Acres More or Less*, CV ELH-15-3462, 2016 WL 1248670, at *19 (D. Md. Mar. 25, 2016); *Columbia Gas Transmission, LLC v. 84.53 Acres of Land, More or Less, In Calhoun, Marshall, Ritchie, Tyler, & Wetzel Cntys., W. Virginia*, 310 F. Supp. 3d 685, 689 (N.D. W. Va. 2018).

The Project, as approved, contemplates an approximately 4,294-foot HDD to pass beneath multiple tracts of real property, including the Tract, and there are significant construction activities for the Project as a whole. The Easement is an integral portion of the HDD, as the HDD could not

be completed as approved by the FERC Certificate without it. Additionally, critical strategic planning is required to schedule and coordinate the performance of the significant construction activities along the Project Route. While the HDD process requires significant coordinating and scheduling on its own, the particular work to be done on this Tract requires even more rigorous coordination because, among other things, the HDD must pass below the Potomac River—a highly-complex crossing that is unique to the tract on which this Easement is located. Any uncertainty regarding access to and use of the Easement, as well as any other deviations from the construction and project-management schedules, will prevent the HDD from commencing, thereby hindering the critical strategic planning and coordination.

Therefore, without the preliminary injunction Columbia will not be able to prosecute construction activities as scheduled and contracted. If Columbia does not obtain the right of immediate access, it will prevent the necessary mobilization of Columbia’s Project construction contractors (and their subcontractors and materialman), exposing Columbia to, among other things, substantial damages associated with delay and/or loss of qualified contractors to perform the very specialized work associated with the pipeline installation at issue. Indeed, if not allowed immediate access to and use of the Easement, Columbia’s construction schedule is almost certainly unattainable, and Columbia’s ability to complete the Project before the July 19, 2020 expiry deadline under the Certificate (the “**Certificate Expiry Date**”) and Columbia’s contractually committed in-service date of November 1, 2020 (the “**In-Service Deadline**”) would be seriously jeopardized.

Additionally, Columbia’s business reputation with its contractors, both those associated with the Project and others in the industry in general, would be irreparably harmed as a result of any significant delay in the Project. In sum, if the Project’s construction schedule is substantially

and materially impaired, this could threaten the viability of the Project and cause immeasurable, non-compensable harm to Columbia's business reputation and goodwill. Immediate access to and use of the Easement is therefore necessary to ensure that Columbia can complete the Project before the Certificate Expiry Date, comply with its obligations, and meet its In-Service Deadline.

Meanwhile, the balance of equities demonstrably weighs in Columbia's favor. Because the determination of the amount of just compensation owing by reason of Columbia's appropriation of the Easement will not be impacted by immediate access to and use of the Easement, Defendant will suffer no harm by virtue of the granting of expedited access and use.

Finally, the public interest weighs in favor of granting a preliminary injunction because, among other reasons, expeditious completion of the Project requires immediate access. The Project is integral to bringing high-quality natural gas to market through safe, secure, and reliable methods, which will directly benefit the general public.

Based on the foregoing, and for the reasons more fully stated in Columbia's Memorandum in Support, Columbia respectfully requests that this Court enter an order of condemnation and use its inherent equitable power to award a preliminary injunction granting Columbia immediate access to and use of the Easement for the purposes of the Project.

Dated: May 16, 2019

Respectfully submitted,

By: /s/

Alan M. Rifkin (MD Bar No. 11562)
Barry L. Gogel (MD Bar No. 25495)
Rifkin Weiner Livingston, LLC
225 Duke of Gloucester Street
Annapolis, Maryland 21401
T: 410.269.5066
F: 410.269.1235
arifkin@rwllaw.com
bgogel@rwllaw.com

John Haug (to be admitted pro hac vice)
David Fedder (to be admitted pro hac vice)
Michael Harriss (to be admitted pro hac vice)
Dentons US LLP
211 N. Broadway Suite 3000
St. Louis, MO 63102
T: 314.259.1800
F: 314.259.5959
john.haug@dentons.com
david.fedder@dentons.com
michael.harriss@dentons.com

*Attorneys for Plaintiff Columbia Gas Transmission,
LLC*

109895913

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

COLUMBIA GAS TRANSMISSION, LLC,)
)
Plaintiff,)
)
v.) Civil Action No.:
)
0.12 ACRES OF LAND, MORE OR)
LESS, IN WASHINGTON COUNTY,)
MARYLAND; STATE OF MARYLAND,)
DEPARTMENT OF NATURAL RESOURCES,)
)
Defendants.)

DECLARATION OF JACOB HANEY, P.E.

I, Jacob Haney, Project Manager, declare the following:

1. I am over the age of 18.

2. I submit this Declaration in support of the Motion for an Order of Condemnation and for Preliminary Injunction filed by Plaintiff Columbia Gas Transmission, LLC (“**Columbia**”).

I have knowledge of the facts set forth herein based upon personal knowledge and information made known to me through my work for Columbia, including, without limitation, from review of Columbia’s business records prepared and maintained in the course of Columbia’s regularly conducted business activities. If called as a witness, I could and would testify competently thereto under oath.

3. I am a Project Manager for TransCanada Corporation and have been employed by TransCanada in that role since 2014. Columbia is a wholly owned subsidiary of TransCanada. Since March of 2018, I have served as a Project Manager with respect to Columbia’s Eastern Panhandle Expansion Project (the “**Project**”). I have worked in the natural gas pipeline industry since 2011. In addition, I am a licensed professional engineer.

4. In my capacity as Project Manager, I am familiar with the Project, including,

without limitation, the permitting and approval processes and Columbia's efforts to acquire, and the intended uses of, the necessary property interest at issue in this action, which is fully described in **Exhibit B** (the “**Easement**”) to the Complaint in Condemnation (ECF No. 1) filed by Columbia in the above-captioned action (the “**Complaint**”). Additionally, I am familiar with, among other things, the Project’s construction schedule, budgeting, and the impacts any changes to the construction schedule will have on the Project.

AUTHORITY FOR THE PROJECT

5. Columbia owns and operates one of the largest underground natural gas storage and transmission systems in North America. It transports an average of three billion cubic feet of natural gas per day through its network of nearly 12,000 miles of pipeline, covering ten states and hundreds of communities.

6. Columbia is an interstate natural gas transmission company. Columbia is subject to the jurisdiction of the Federal Energy Regulatory Commission (“**FERC**”), and is qualified thereby to construct, own, operate, and maintain facilities used to transport natural gas in interstate commerce.

7. On or about July 19, 2018, in FERC Docket No. CP17-80-000, FERC issued a Certificate of Public Convenience and Necessity to Columbia, authorizing Columbia to, among other things, construct the Project (the “**FERC Certificate**”). A true and correct copy of the FERC Certificate is attached to the Complaint as **Exhibit A**.

8. Specifically, the FERC Certificate authorizes the Project, which will include, among other things, the construction, maintenance, and operation of a new natural gas pipeline together with connections, fittings, cathodic protection equipment, pipeline markers, and all other below ground equipment, appurtenances and appurtenant facilities thereto in Washington County,

Maryland and other non-jurisdictional counties. As part of its Project, and in accordance with its authority under the Certificate, among other things, Columbia will construct and operate the below-described pipeline segment:

Approximately 3.37 miles of 8-inch-diameter pipeline from Fulton County, Pennsylvania to Morgan County, West Virginia.

The subject pipeline will commence at interconnections with Columbia's Line 1804 and Line 10240 in Fulton County, Pennsylvania and extend through Washington County, Maryland, to a point of delivery with the local distribution system of Mountaineer Gas Company, the project shipper, in Morgan County, West Virginia. The primary purpose of this Project is to provide up to 47,500 dekatherms per day (Dth/d) of incremental firm transportation service to serve markets in West Virginia, in addition to serving multiple communities by increasing supply options and enabling the safe and reliable transport of natural gas, and the Easement will be used to that end.

COLUMBIA'S RIGHT TO CONDEMN

9. To complete the Project, Columbia must acquire the Easement across the single tract of real property at issue in this case.

10. As the Project, and the Project route, have been approved by the FERC Certificate, Columbia is authorized by FERC to acquire the Easement, which constitutes a portion of the FERC-approved route.

11. The Easement is fully depicted and described in Exhibit B to the Complaint, which is incorporated herein by reference. The Exhibit, which includes a plat of the Easement and the property to be encumbered, provides, among other things, the following information about the Easement: (a) the location of the Tract affected by the Easement (the "Tract"); (b) the specific amount of acres affected by the permanent property rights sought; (c) the property boundaries; (d) the FERC-approved pipeline route; (e) the area and type of permanent property rights sought;

(f) a diagram showing the northern direction on the property; and (g) a bar scale depicting the actual distances on the plat.

12. Columbia has caused a reasonably diligent search of the public records to be conducted, considering both the property's character and value and the interests to be acquired, in order to ascertain the identity of parties owning or having an interest in the Tract, and this search indicated that the State of Maryland, Department of Natural Resources ("MDNR," the "**Defendant**") is the record title holder of the Tract and the only party in interest potentially affected by this taking.

COLUMBIA'S INABILITY TO ACQUIRE THE EASEMENT BY CONTRACT

13. Columbia's Easement-acquisition efforts, which began in 2016, have included, among other things: (a) searching land title records to ascertain the identities of potentially affected owners and interest holders; (b) making direct contact with representatives of MDNR through telephone calls, personal meetings, and/or written correspondence to discuss the Project and the related Easement rights sought by Columbia; (c) commissioning an appraisal for the subject property; (d) submitting requested documents and information to MDNR, and (e) negotiating both the terms of acquisition and the form of the easement agreement with MDNR.

14. Columbia commissioned an appraisal by an independent appraiser licensed in the State of Maryland to determine the compensation due by reason of the imposition of the Easement sought for the Project (the "**Appraisal**").

15. Columbia and MDNR have negotiated extensively. Most recently, Columbia offered MDNR consideration for the Easement in the amount of \$5,000.00, an amount in excess of the compensation due as determined by the Appraisal.

16. Thereafter, negotiated and agreed-upon terms of a proposed easement agreement

were reached, the execution of which would have obviated the need for these proceedings.

17. On information and belief, formal conveyance of the Easement rights pursuant to the negotiated and agreed-upon terms and form of the easement agreement requires approval by the Maryland Board of Public Works (“BPW”). After more than two years of effort by Columbia, the matter of approval of the conveyance of the Easement was placed on the agenda for the January 2, 2019 BPW meeting, at which Columbia’s easement application was denied.

18. Columbia, accordingly, has been unable to acquire the necessary Easement by agreement despite its exhaustive efforts to do so.

19. Significantly, of the 22 tracts of real property impacted by the Project in total, Columbia has, prior to instituting these proceedings, successfully negotiated the voluntary acquisition of easements on 18 tracts (82% of the tracts), leaving only this single tract and three others under common ownership of the National Park Service unacquired. All privately-owned property has been voluntarily acquired without the need for Court intervention.

20. Upon information and belief based upon, among other things, the course of negotiations with MDNR and the negotiated Easement consideration, the amount claimed by the record title holder of the Tract relative to the outstanding Easement exceeds \$3,000.

THE NEED FOR IMMEDIATE ACCESS TO AND USE OF THE EASEMENT

A. The Necessity of the Easement

21. Acquiring the Easement is necessary in order to effectuate the Project in accordance with the FERC Certificate.

22. The Project as a whole includes the construction of a new eight-inch pipeline, extending approximately 3.4 miles, from existing 20-inch and 24-inch pipelines in Fulton County, Pennsylvania to a site in Morgan County, West Virginia. The proposed pathway of the pipeline

would cross Washington County, Maryland and travel under the Potomac River before ending at a meter station in Morgan County.

23. FERC has determined and approved the route of the Project (the “**Project Route**”).

24. The Easement is a portion of the Project Route approved by the FERC Certificate as necessary for the construction, maintenance, operation, alteration, testing, replacement, and repair of the Project. The FERC-approved Project Route generally includes: (a) a fifty-foot-wide permanent easement to place, operate, replace and/or maintain the pipeline; (b) associated construction easements necessary to construct and/or replace the pipeline; and (c) all rights, including of ingress, egress, and reasonable access, necessary to construct, protect, repair, replace, upkeep, and maintain the pipeline and the permanent easement.

25. The Easement will be 102 feet long and 50 feet wide. The Easement comprises a portion of an approximately 4,294-foot horizontal directional drill (“HDD”) that will, among other things, pass beneath the Tract at approximately 175 feet below the surface and beneath the Potomac River at a depth of approximately 114 feet. Neither the entry nor the exit point of the HDD is situated on the Tract at issue; accordingly, there is no contemplated disturbance of the surface of the Tract as a result of the Project.

26. Columbia cannot construct the Project in accordance with the FERC Certificate without acquiring the Easement.

B. The Necessity of Immediate Access to and Use of the Easement

27. Columbia requires immediate access to and use of the Easement.

28. Two different yet equally important deadlines are at play for the Project: the July 19, 2020 expiry deadline under the Certificate (the “Certificate Expiry Date”) and Columbia’s contractually committed in-service date of November 1, 2020 (the “In-Service Deadline”).

29. Columbia must commence active construction activities for the Project as soon as is practicable in order to meet the Certificate Expiry Date and its In-Service Deadline.

30. Construction activities on the 22 affected properties along the Project Route will vary. Columbia's anticipated construction activities for the Project as a whole (not necessarily limited to the construction activities on the Tract) include some or all of the following: (a) easement preparation to include removal of any appurtenances, trees, etc., and the installation of any required environmental control and/or safety control devices; (b) easement grading, which includes segregating and stockpiling of topsoil as appropriate; (c) preparation of the pipeline trench to receive the pipeline, including blasting, if required; (d) welding of the pipeline, and radiographic or ultrasonic inspection of the welds; (e) lowering of the pipeline into the ditch; (f) making tie-in welds to other installed portions of the pipeline, and radiographic or ultrasonic inspection thereof; (g) coating of the welds; (h) padding and backfilling of the pipeline; (i) temporary and permanent restorations of the affected property; (j) hydrostatic testing of the pipeline; (k) removal of the test water; and (l) purging and pressurizing of the pipeline with natural gas to operating pressure.

31. As mentioned above, the Project, as approved, contemplates an approximately 4,294-foot HDD to pass beneath multiple tracts of real property, including the Tract. The entry point of the HDD will be situated approximately 2,934 linear feet to the southeast of the Tract, and its exit point will be situated approximately 1,880 linear feet to the northwest of the Tract. The Easement is an integral portion of the HDD, as the HDD could not be completed as approved by the FERC Certificate without it.

32. Critical strategic planning is required to schedule and coordinate the performance of the above-described activities along the Project Route. Industry standard practices dictate that the pipeline be constructed using a linear construction method, proceeding sequentially from one

end of a segment of the Project Route to the other, without having to “skip” properties due to lack of access. It is extremely inefficient, vastly more costly, and, often, not feasible to construct the pipeline or perform the HDD work that is required in any other non-linear construction method, *i.e.*, by beginning on a property over which Columbia has the necessary easements and access, then demobilizing and remobilizing around (or “skipping over”) a property over which Columbia does not have an easement and access (*e.g.*, the tract on which the Easement is located), and then returning later to construct that portion of the pipeline. This non-linear practice would, among other things, cause significant delays and substantial additional costs, which would threaten the Project’s very viability.

33. Columbia cannot timely execute its industry standard linear construction plan without a grant of immediate access to and use of the Easement.

34. Moreover, Columbia has already expended significant effort coordinating and scheduling the Project’s work, which requires various contractors with particularized expertise, who must execute and coordinate their sequenced work as dictated by the linear construction method. While the HDD process requires significant coordinating and scheduling on its own, the particular work to be done on this Tract requires even more rigorous coordination because, among other things, the HDD must pass below the Potomac River—a highly-complex crossing that is unique to the tract on which this Easement is located. Because more detailed and particularized coordinating and scheduling will be required to properly effectuate the crossing under the Potomac River in compliance with FERC Certificate obligations, and more specialized contractors will be required, immediate access to and use of the Easement is required.

35. Additionally, all of the work of the Project must be coordinated to ensure compliance with, among other things, the requirements of the FERC Certificate, the Environmental

Conditions listed in the Appendix to the FERC Certificate, and the Occupational Safety and Health Administration.

36. Importantly, the coordination and cost of all such activities is significantly impacted by any “no work” periods. Because the Easement represents an integral portion of the HDD, uncertainty regarding access to and use of the Easement, as well as any other deviations from the construction and project-management schedules, prevents the HDD work from commencing—*i.e.*, it causes a “no work” period. That lack of coordination, or the inability to proceed as planned, can prevent Columbia from timely finishing the Project.

C. Irreparable Harm to Columbia and Its Customers Without Immediate Access to and Use of the Easement

37. Among other things, FERC requires Columbia to adhere to the construction procedures as submitted to FERC in the approval process, as well as to comply with the Environmental Conditions listed in the appendix to the FERC Certificate, all of which currently provide for the completion of construction and making the proposed facilities available for service by the Certificate Expiry Date. Due to a combination of permit restrictions, tree and vegetation clearing restrictions, stream crossing restrictions, and practical limitations associated with performing the necessary work at issue during the winter months, the HDD work must be performed between June 15th and March 1st. Accordingly, to meet its Certificate Expiry Date, Columbia must commence the HDD by no later than November 4, 2019.

38. It is anticipated that the HDD work will take approximately 60 to 75 days to complete. Furthermore, given the nature of the HDD work, and the high demand for the specialized contractors who perform it, Columbia must give its HDD contractor not less than three months of advance notice of mobilization or risk the very real possibility that the contractors will not be available at the designated time. Notice to mobilize cannot be given unless and until Columbia has

the right to make use of the Easement as, among other things, Columbia would owe its HDD contractor delay damages of \$25,000 per day for each day the Right-of-Way was not available after notice is given. The practical realities associated with the scarcity of available specialized contractors and resources will become even more extreme as the calendar advances through 2019 and into 2020. The pipeline industry faces a veritable “perfect storm” from a project construction perspective in 2019-2020, a period during which there are not only an unprecedented number of large pipeline projects coming on line for construction, but projects which are clustered geographically in Appalachia and in the central/eastern portion of the United States – greatly taxing the limited pool of specialized contractors and resources. Immediate access to and use of the Easement is necessary to ensure that Columbia can complete construction, comply with its obligations, and make the proposed facilities available for service by the FERC deadline.

39. As is referenced above, in addition to the Certificate Expiry Date, Columbia also faces the In-Service Deadline. Specifically, Columbia is under contractual obligations with a third-party shipper, Mountaineer Gas Company, to deliver long-term natural gas transportation service through the pipeline by November 1, 2020.

(i) Harm to Columbia

40. For the reasons discussed in the preceding paragraphs, without immediate access to and use of the Easement, Columbia’s construction schedule is almost certainly unattainable. Likewise, Columbia’s ability to complete the Project before the Certificate Expiry Date and to meet its In-Service Deadline would be seriously jeopardized. If Columbia fails to meet its In-Service Deadline, Columbia will suffer significant economic harm, including, without limitation, losses of approximately \$300,000 per month in foregone revenue, unless and until it completes the Project.

41. If Columbia does not obtain the right of immediate access, it will prevent the necessary mobilization of Columbia's Project construction contractors (and their subcontractors and materialman), exposing Columbia to, among other things, substantial damages associated with delay and/or loss of qualified contractors to perform the very specialized work associated with the pipeline installation at issue.

42. Missing these deadlines would also have significant consequences beyond the Project at hand.

43. In addition to potential damages for loss of its specialized contractors, Columbia's business reputation with its contractors, both those associated with the Project and others in the industry in general, would be irreparably harmed as a result of any significant delay in the Project.

44. For the reasons discussed above, competition to attract and retain qualified specialty pipeline contractors is keen. By committing to one project on a projected timeline, contractors are, necessarily, foregoing other opportunities. Should Columbia be unable to prosecute its work on this Project on its contractually projected and committed timelines, that fact will almost certainly negatively affect Columbia's future negotiations with contractors for both this Project and other projects in the future. This reputational harm to Columbia's business and goodwill would be real, substantial, and irreparable.

45. Similarly, Columbia faces real and substantial reputational harm and loss of goodwill with potential customers should it miss its In-Service Deadline and/or otherwise fail to perform on the Project. Should it become known that Columbia could not meet its contractual and FERC imposed deadlines for this Project, customers/shippers on future projects will be unwilling to make the long-term commitments, many of which necessarily span many years, that are necessary for future Columbia projects that require construction of pipeline infrastructure. They,

instead, would commit to Columbia's competitors for future projects.

(ii) Harm to Columbia's Customer

46. Delays in completion of the Project will negatively impact Columbia's customer, Mountaineer Gas.

47. Mountaineer Gas has committed substantial resources and efforts in anticipation of the service to be provided by the Project. More than \$35 million has been expended to date.

48. Among other things, Mountaineer faces reliability concerns with its existing aging infrastructure. The Project is designed to alleviate those concerns. Unless and until the secure and assured service from the Project is in place, Mountaineer is unable to commit to new customers, and uncertainty as to its ability to provide uninterrupted service to existing customers will continue.

(iii) Harm to Columbia's Customer's Customers

49. The Project will directly benefit residential, business, and utility customers, as recognized by FERC, by, among other things, serving as a safe, secure, affordable, and reliable source of clean natural gas. The additional volume the Project is intended to transport, which will ultimately be used by downstream consumers, such as families and business owners, will be lost to the market until the pipeline becomes operational.

(iv) Harm to Third Parties

50. In addition, the Project will generate jobs in the region through work for local businesses, unions, and contractors, yielding substantial revenues and taxes, as the estimated construction cost of the Project is in excess of \$23 million, which could be impacted by delays in the Project, particularly those threatening the viability of the Project itself.

51. For the foregoing reasons, among others, if Columbia were required to wait until the issue of "just compensation" has been fully and finally adjudicated before accessing and

making use of the Easement, the very viability of the Project, which has already been vetted and approved by FERC, would be compromised, causing irreparable harm to Columbia, its customer, and its customer's customers.

D. No Harm from Granting Columbia Immediate Access to and Use of the Easement

52. In contrast, Defendant will suffer no harm by virtue of the Court's granting of immediate access to and use of the Easement, as the determination of just compensation owed by reason of Columbia's appropriation of the Easement is not affected by immediate access and use.

53. Moreover, FERC specifically found that Columbia had taken sufficient measures to minimize the impacts of the Project on landowners and communities, as noted in the FERC Certificate. FERC also found that there would be no locally or regionally significant impacts on air quality as a result of the Project, and specifically found that HDD drilling under the Potomac and Chesapeake and Ohio Canal Historic Park would not have significant adverse impacts. In fact, FERC concluded that a full environmental impact statement was unnecessary because its approval of the Project would not constitute a major federal action significantly affecting the quality of the human environment, so long as the Project is constructed and operated in accordance with Columbia's application and supplements, and in compliance with the environmental conditions in the FERC Certificate.

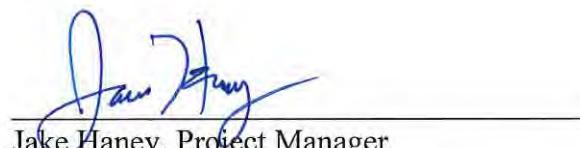
54. Therefore, as Defendant will suffer no harm, there will be no harm from granting Columbia immediate access to and use of the Easement, and the Project will enhance Columbia's ability to meet its new and existing service obligations, serve to ensure continued pipeline safety, and promote the efficiency and reliability of transporting natural gas to the public.

55. Columbia stands ready to deposit into the registry of the Court the amount of its rejected pre-condemnation offer, \$5,000, or such other amount as may be deemed appropriate by

this Court, together with a bond, pursuant to Fed. R. Civ. P. 65(c), for such additional amount as may be deemed appropriate by this Court.

56. Columbia, and its parent company, TransCanada Corporation, are long-established businesses with substantial holdings, operations, revenues, and resources.

On this day, May 15 2019, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Jake Haney, Project Manager